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भारत का राजपत्र
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No. 34] NEW DELHI, AUGUST 26—SEPTEMBER 1, 2018, SATURDAY/ BHARDA 4— BHARDA 10, 1940

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य और परिवार कल्याण विभाग)

नई दिल्ली, 4 जनवरी, 2018

का.आ. 1268.—मंत्रालय की अधिसूचना सं.यू.12012/736/2015-एमई-।(पी-।।) दिनांक 15.12.2015 के अनुक्रम में केन्द्र सरकार एतदद्वारा, कॉलेज प्राधिकारियो द्वारा प्रवेश रोके जाने के कारण, भारतीय आयुर्विज्ञान परिषद अधिनियम,1956 की प्रथम अनुसूची में, निम्नलिखित और संशोधन करती है।

उक्त प्रथम अनुसूची में 'मान्यता प्राप्त आयुर्विज्ञान अर्हता' शीर्षक के अधीन [जिसे इसके आगे कालम(2) कहा गया है] "एनआरआई मेडिकल कॉलेज एंड जनरल अस्पताल, गुंटूर, आंध्र प्रदेश" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"डिप्लोमा इन आपथालमॉलोजी"	डीओ (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह केवल 2017-18 अकादमिक सत्र तक प्रवेश पाए छात्रों के संबंध में, डॉ.एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा, आंध्र प्रदेश द्वारा प्रदत्त होगी।

[फा. सं. यू-12012/28/2016-एमई.-I]

डी. वी. के. राव, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 4th January, 2018

S.O. 1268.—In continuation to the Ministry's Notification No.U.12012/736/2015-ME.I dated 15.12.2015, the Central Government, hereby makes the following further amendments in the First Schedule to the Indian Medical Council Act, 1956 due to stoppage of admission by the college authorities:-

In the qualifications mentioned against **"NRI Medical College & General Hospital, Guntur, Andhra Pradesh"** under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], against the following qualifications and entry relating thereto under the heading 'Abbreviation for Registration" [hereinafter referred to as column (3)], the following shall be inserted, namely-

(2)	(3)
"Diploma in Ophthalmology"	DO (This shall be a recognized medical qualification when granted by Dr. NTR University of Health Sciences, Vijayawada, Andhra Pradesh in respect of students admitted upto the academic session 2017-18 only.)

[F.No. U.12012/28/2016-ME-I]

D. V. K. RAO, Under Secy.

नई दिल्ली, 4 जनवरी, 2018

का.आ. 1269.— मंत्रालय की अधिसूचना सं.यू.12012/72/2012-एमई-I (पी-II) दिनांक 06.11.2012 के अनुक्रम में केन्द्र सरकार एतदद्वारा, कॉलेज प्राधिकारियो द्वारा प्रवेश रोके जाने के कारण, भारतीय आयुर्विज्ञान परिषद अधिनियम,1956 की प्रथम अनुसूची में, निम्नलिखित और संशोधन करती है।

उक्त प्रथम अनुसूची में 'मान्यता प्राप्त आयुर्विज्ञान अर्हता' शीर्षक के अधीन [जिसे इसके आगे कालम (2) कहा गया है] "एनआरआई मेडिकल कॉलेज एंड जनरल अस्पताल, गुंटूर, आंध्र प्रदेश" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:-

(2)	(3)
"डिप्लोमा इन ऑर्थोपीडिक्स"	डीऑर्थो (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह केवल 2017-18 अकादमिक सत्र तक प्रवेश पाए छात्रों के संबंध में, डॉ.एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा, आंध्र प्रदेश द्वारा प्रदत्त होगी।

[फा. सं. नं. यू-12012/28/2016-एमई.-I]

डी. वी. के. राव, अवर सचिव

New Delhi, the 4th January, 2018

S.O. 1269.— In continuation to the Ministry's notification No.U.12012/72/2012-ME(P.II) dated 06.11.2012, the Central Government, hereby makes the following further amendments in the First Schedule to the Indian Medical Council Act, 1956 due to stoppage of admission by the college authorities:-

In the qualifications mentioned against **"NRI Medical College & General Hospital, Guntur, Andhra Pradesh"** under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], against the following qualifications and entry relating thereto under the heading 'Abbreviation for Registration"[hereinafter referred to as column (3)], the following shall be inserted, namely-

(2)	(3)
"Diploma in Orthopaedics"	D.Ortho (This shall be a recognized medical qualification when granted by Dr. NTR University of Health Sciences, Vijayawada, Andhra Pradesh in respect of students admitted upto the academic session 2017-18 only.)

[No. U.-12012/28/2016-ME-I]

D. V. K. RAO, Under Secy.

नई दिल्ली, 4 जनवरी, 2018

का.आ. 1270.—मंत्रालय की अधिसूचना सं.यू.12012/15/2013-एमई-।(पी-।।) दिनांक 23.04.2013 के अनुक्रम में केन्द्र सरकार एतदद्वारा, कॉलेज प्राधिकारियो द्वारा प्रवेश रोके जाने के कारण, भारतीय आयुर्विज्ञान परिषद अधिनियम,1956 की प्रथम अनुसूची में, निम्नलिखित और संशोधन करती है।

उक्त प्रथम अनुसूची में 'मान्यता प्राप्त आयुर्विज्ञान अर्हता' शीर्षक के अधीन [जिसे इसके आगे कालम (2) कहा गया है] "एनआरआई मेडिकल कॉलेज एंड जनरल अस्पताल, गुंटूर, आंध्र प्रदेश" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:-

(2)	(3)
"डिप्लोमा इन चाइल्ड हैल्थ"	डीसीएच (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह केवल 2017-18 अकादमिक सत्र तक प्रवेश पाए छात्रों के संबंध में, डॉ.एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा, आंध्र प्रदेश द्वारा प्रदत्त होगी।

[फा. सं. यू-12012/28/2016-एमई.।]

डी. वी. के. राव, अवर सचिव

New Delhi, the 4th January, 2018

S.O. 1270.— In continuation to the Ministry's Notification No.U.12012/15/2013-ME(P.II) dated 23.04.2013, the Central Government, hereby makes the following further amendments in the First Schedule to the Indian Medical Council Act, 1956 due to stoppage of admission by the college authorities:-

In the qualifications mentioned against **"NRI Medical College & General Hospital, Guntur, Andhra Pradesh"** under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], against the following qualifications and entry relating thereto under the heading 'Abbreviation for Registration"[hereinafter referred to as column (3)], the following shall be inserted, namely-

(2)	(3)
"Diploma in Child Health"	DCH (This shall be a recognized medical qualification when granted by Dr. NTR University of Health Sciences, Vijayawada, Andhra Pradesh in respect of students admitted upto the academic session 2017-18 only.)

[F. No.U.-12012/28/2016-ME.-I]

D. V. K. RAO, Under Secy.

नई दिल्ली, 4 जनवरी, 2018

का.आ. 1271.— मंत्रालय की अधिसूचना सं.यू.12012/61/2012-एमई-।(पी-।।) दिनांक 19.10.2012 के अनुक्रम में केन्द्र सरकार एतदद्वारा, कॉलेज प्राधिकारियों द्वारा प्रवेश रोके जाने के कारण, भारतीय आयुर्विज्ञान परिषद अधिनियम,1956 की प्रथम अनुसूची में, निम्नलिखित और संशोधन करती है।

उक्त प्रथम अनुसूची में 'मान्यता प्राप्त आयुर्विज्ञान अर्हता'शीर्षक के अधीन [जिसे इसके आगे कालम(2) कहा गया है] "एनआरआई मेडिकल कॉलेज एंड जनरल अस्पताल, गुंटूर, आंध्र प्रदेश" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:-

(2)	(3)
"डिप्लोमा इन ऑब्सटेट्रिक्स एंड गाइनिकॉलोजी"	डीजीओ (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह केवल 2017-18 अकादमिक सत्र तक प्रवेश पाए छात्रों के संबंध में, डॉ.एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा, आंध्र प्रदेश द्वारा प्रदत्त होगी।
"डिप्लोमा इन डर्मेटॉलोजी, वेनरालोजी एंड लेप्रसी "	डीडीवीएल (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह केवल 2017-18 अकादमिक सत्र तक प्रवेश पाए छात्रों के संबंध में, डॉ.एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा, आंध्र प्रदेश द्वारा प्रदत्त होगी।
"डिप्लोमा इन एनिस्थीसिया "	डीए (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह केवल 2017-18 अकादमिक सत्र तक प्रवेश पाए छात्रों के संबंध में, डॉ.एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा, आंध्र प्रदेश द्वारा प्रदत्त होगी।
"डिप्लोमा इन रेडियो-डायग्नोसिस "	डीएमआरडी (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह केवल 2017-18 अकादमिक सत्र तक प्रवेश पाए छात्रों के संबंध में, डॉ.एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा, आंध्र प्रदेश द्वारा प्रदत्त होगी।

[फा. सं. यू-12012/28/2016-एमई.-।]

डी. वी. के. राव, अवर सचिव

New Delhi, the 4th January, 2018

S.O. 1271.—In continuation to the Ministry's Notification No.U.12012/61/2012-ME(P.II) dated 19.10.2012, the Central Government, hereby makes the following further amendments in the First Schedule to the Indian Medical Council Act, 1956 due to stoppage of admission by the college authorities:-

In the qualifications mentioned against **"NRI Medical College & General Hospital, Guntur, Andhra Pradesh"** under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], against the following qualifications and entry relating thereto under the heading 'Abbreviation for Registration"[hereinafter referred to as column (3)], the following shall be inserted, namely-

(2)	(3)
"Diploma in Obstetrics & Gynaecology"	DGO (This shall be a recognized medical qualification when granted by Dr. NTR University of Health Sciences, Vijayawada, Andhra Pradesh in respect of students admitted upto the academic session 2017-18 only.)
"Diploma in Dermatology, Venerology & Leprosy"	DDVL (This shall be a recognized medical qualification when granted by Dr. NTR University of Health Sciences, Vijayawada, Andhra Pradesh in respect of students admitted upto the academic session 2017-18 only.)
"Diploma in Anaesthesia"	DA (This shall be a recognized medical qualification when granted by Dr. NTR University of Health Sciences, Vijayawada, Andhra Pradesh in respect of students admitted upto the academic session 2017-18 only.)
"Diploma in Radio Diagnosis"	DMRD (This shall be a recognized medical qualification when granted by Dr. NTR University of Health Sciences, Vijayawada, Andhra Pradesh in respect of students admitted upto the academic session 2017-18 only.)

[F. No.U.-12012/28/2016-ME.-I]

D. V. K. RAO, Under Secy.

नई दिल्ली, 4 जनवरी, 2018

का.आ. 1272.— मंत्रालय की अधिसूचना सं.यू.12012/481/2015-एमई-।(पी-।।) दिनांक 14.08.2015 के अनुक्रम में केन्द्र सरकार एतदद्वारा, कॉलेज प्राधिकारियो द्वारा प्रवेश रोके जाने के कारण, भारतीय आयुर्विज्ञान परिषद अधिनियम,1956 की प्रथम अनुसूची में, निम्नलिखित और संशोधन करती है।

उक्त प्रथम अनुसूची में 'मान्यता प्राप्त आयुर्विज्ञान अर्हता'शीर्षक के अधीन[जिसे इसके आगे कालम(2) कहा गया है] "एनआरआई मेडिकल कॉलेज एंड जनरल अस्पताल, गुंटूर, आंध्र प्रदेश" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:-

(2)	(3)
"डिप्लोमा इन टुवरक्यलूसिस एंड चेस्ट डिसीसीस"	डीटीसीडी (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह केवल 2017-18 अकादमिक सत्र तक प्रवेश पाए छात्रों के

संबंध में, डॉ.एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा, आंध्र प्रदेश द्वारा प्रदत्त होगी।

[फा. सं. यू-12012/28/2016-एमई.-I]

डी. वी. के. राव, अवर सचिव

New Delhi, the 4th January, 2018

S.O. 1272.— In continuation to the Ministry's Notification No.U.12012/481/2015-ME(P.II) dated 14.08.2015, the Central Government, hereby makes the following further amendments in the First Schedule to the Indian Medical Council Act, 1956 due to stoppage of admission by the college authorities:-

In the qualifications mentioned against **"NRI Medical College & General Hospital, Guntur, Andhra Pradesh"** under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], against the following qualifications and entry relating thereto under the heading 'Abbreviation for Registration"[hereinafter referred to as column (3)], the following shall be inserted, namely-

(2)	(3)
"Diploma in Tuberculosis & Chest Diseases"	DTCD (This shall be a recognized medical qualification when granted by Dr. NTR University of Health Sciences, Vijayawada, Andhra Pradesh in respect of students admitted upto the academic session 2017-18 only.)

[F. No.U.-12012/28/2016-ME.-I]

D. V. K. RAO, Under Secy.

शुद्धि-पत्र

नई दिल्ली, 20 जुलाई, 2018

का.आ. 1273.—इस विभाग की अधिसूचना सं.यू-12012//01/2017-एमई-I दिनांक 01.02.2017 के अनुक्रम में और भारतीय आयुर्विज्ञान परिषद अधिनियम,1956(1956 का 102) की धारा 11 की उप धारा(2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, भारतीय आयुर्विज्ञान परिषद से परामर्श करके उक्त अधिनियम की प्रथम अनुसूची में, निम्नलिखित, और संशोधन करती है, अर्थात:-

उक्त अनुसूची में –

(क) "केरल स्वास्थ्य विज्ञान विश्वविद्यालय, तृश्शूर" के समक्ष 'पंजीकरण के लिए संक्षिप्तिकरण' कालम(3) शीर्षक के अंतर्गत मास्टर ऑफ सर्जरी(ईएनटी) 'मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह जुबली मिशन मेडिकल कालेज व अनुसंधान संस्थान में 2015 की बजाए 2014 अथवा उसके पश्चात प्रशिक्षित किए गए छात्रों को केरल स्वास्थ्य विज्ञान विश्वविद्यालय, तृश्शूर द्वारा प्रदत्त होगी।

[सं. यू-12012/01/2017-एमई-I(पार्ट 3)]

डी. वी. के. राव, अवर सचिव

CORRIGENDUM

New Delhi, the 20th July, 2018

S.O. 1273.—In continuation to this Department's Notification No.U.12012/01/2017-ME-I dated 01.02.2017 and in exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956(102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:-

In the said Schedule –

(a) against "Kerala University of Health Sciences, Thrissur" under the heading 'Abbreviation for Registration' (column 3), the Master of Surgery (ENT) qualification shall be a recognised medical qualification when granted by Kerala University of Health Sciences in respect of students being trained at Jubilee Mission Medical College & Research Institute on or after 2014 instead of 2015".

[No.U.-12012/01/2017-ME-I (Pt.3)]

D. V. K. RAO, Under Secy.

नई दिल्ली, 31 जुलाई, 2018

का.आ. 1274.—भारतीय आयुर्विज्ञान परिषद अधिनियम,1956(1956 का 102) की धारा 11 की उप धारा(2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार, भारतीय आयुर्विज्ञान परिषद से परामर्श करके उक्त अधिनियम की प्रथम अनुसूची में, निम्नलिखित, और संशोधन करती है।

उक्त प्रथम अनुसूची में

(i) मान्यताप्राप्त [आयुर्विज्ञान अर्हता'शीर्षक के अधीन[जिसे इसके आगे कालम(2) कहा गया है] "डॉ.एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संवंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"मजिस्ट्रार चिरुर्गी पीडीएट्रिक सर्जरी"	एम.सीएच (पीडीएट्रिक सर्जरी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह गुंटूर मेडिकल कॉलेज, गुंटूर में प्रशिक्षित किए गए छात्रों के संबंध में 2017 को या बाद में डॉ.एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा, द्वारा प्रदत्त होगी।

(ii) 'मान्यताप्राप्त [आयुर्विज्ञान अर्हता'शीर्षक के अधीन[जिसे इसके आगे कालम(2) कहा गया है] "चौधरी चरण सिंह विश्वविद्यालय" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संवंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"डॉक्टर ऑफ मेडिसिन(रेडियोडॉयग्नोसिस)"	एमडी(रेडियोडॉयग्नोसिस) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह सरस्वती इंस्टिट्यूट ऑफ मेडिकल सांइसिस, हापुड़ में प्रशिक्षित किए गए छात्रों के संबंध में 2017 को या बाद में डॉ चौधरी चरण सिंह विश्वविद्यालय, द्वारा प्रदत्त होगी।

(iii) 'मान्यता प्राप्त [आयुर्विज्ञान अर्हता'शीर्षक के अधीन[जिसे इसके आगे कालम(2) कहा गया है] "राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलुरू" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संवंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"डॉक्टर ऑफ मेडिसिन/मास्टर ऑफ सर्जरी(ऑपथालमॉलोजी)"	एमडी/एमएस(ऑपथालमॉलोजी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह हसन इंस्टिट्यूट ऑफ मेडिकल सांइसिस, हसन में

	प्रशिक्षित किए गए छात्रों के संबंध में 2017 को या बाद में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलुरू द्वारा प्रदत्त होगी।

(iv) 'मान्यताप्राप्त [आयुर्विज्ञान अर्हता'शीर्षक के अधीन[जिसे इसके आगे कालम(2) कहा गया है] "मध्य प्रदेश मेडिकल सांईस विश्वविद्यालय, जबलपुर" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संवंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"डॉक्टर ऑफ मेडिसिन(माइक्रोबॉलोजी)"	एमडी (माइक्रोबॉलोजी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह गजरा राजा मेडिकल कॉलेज, ग्वालियर में प्रशिक्षित किए गए छात्रों के संबंध में 2017 को या बाद में मध्य प्रदेश मेडिकल सांईस विश्वविद्यालय, जबलपुर द्वारा प्रदत्त होगी।

(v) 'मान्यताप्राप्त [आयुर्विज्ञान अर्हता'शीर्षक के अधीन[जिसे इसके आगे कालम(2) कहा गया है] "केरल स्वास्थ्य विज्ञान विश्वविद्यालय, तृश्शूर" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संवंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"डॉक्टर ऑफ मेडिसिन (रेडियोडॉयग्नोसिस/ रेडियॉलोजी)"	एमसीएच(न्यूरोसर्जरी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह टी.डी मेडिकल कॉलेज, आलपुझा में प्रशिक्षित किए गए छात्रों के संबंध में 2016 को या बाद में स्वास्थ्य विज्ञान विश्वविद्यालय, तृश्शूर द्वारा प्रदत्त होगी।
"मास्टर ऑफ सर्जरी (आर्थोपीडिक्स)"	एमएस(आर्थोपीडिक्स) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह अकादमी ऑफ मेडिकल सांइसेज, पेरियारम कुन्नूर में प्रशिक्षित किए गए छात्रों के संबंध में 2016 को या बाद में केरल स्वास्थ्य विज्ञान विश्वविद्यालय, तृश्शूर द्वारा प्रदत्त होगी।

(vi) 'मान्यताप्राप्त [आयुर्विज्ञान अर्हता'शीर्षक के अधीन[जिसे इसके आगे कालम(2) कहा गया है] "निम्स विश्वविद्यालय(डीम्ड विश्वविद्यालय), जयपुर" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संवंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"डॉक्टर ऑफ मेडिसिन (साइकियाट्री)"	एमडी(साइकियाट्री) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह नेशनल इंस्टिट्यूट ऑफ मेडिकल सांइसिस एंड रिसर्च, जयपुर में प्रशिक्षित किए गए छात्रों के संबंध में 2017 को या बाद में निम्स विश्वविद्यालय(डीम्ड विश्वविद्यालय), जयपुर द्वारा प्रदत्त होगी।

(vii) 'मान्यताप्राप्त [आयुर्विज्ञान अर्हता'शीर्षक के अधीन[जिसे इसके आगे कालम(2) कहा गया है] "संतोष विश्वविद्यालय, गाजियाबाद" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:-

(2)	(3)
"डॉक्टर ऑफ मेडिसिन (फारेंसिक मेडिसिन)"	एमडी(फारेंसिक मेडिसिन) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह संतोष मेडिकल कॉलेज, गाजियाबाद में प्रशिक्षित किए गए छात्रों के संबंध में 2011 को या बाद में निम्स विश्वविद्यालय(डीम्ड विश्वविद्यालय), जयपुर द्वारा प्रदत्त होगी।

(viii) 'मान्यता प्राप्त आयुर्विज्ञान अर्हता'शीर्षक के अधीन[जिसे इसके आगे कालम(2) कहा गया है] "तीर्थंकर महावीर विश्वविद्यालय, मुरादाबाद, उत्तर प्रदेश " के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"डॉक्टर ऑफ मेडिसिन (फार्माकॉलोजी)"	एमडी(फार्माकॉलोजी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह तीर्थंकर महावीर मेडिकल कॉलेज एंड रिसर्च सेंटर, मुरादाबाद, उत्तर प्रदेश में प्रशिक्षित किए गए छात्रों के संबंध में 2018 को या बाद में तीर्थंकर महावीर विश्वविद्यालय, मुरादाबाद, उत्तर प्रदेश द्वारा प्रदत्त होगी।
"मास्टर ऑफ सर्जरी (ईएनटी)"	एमएस(ईएनटी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह तीर्थंकर महावीर मेडिकल कॉलेज एंड रिसर्च सेंटर, मुरादाबाद, उत्तर प्रदेश में प्रशिक्षित किए गए छात्रों के संबंध में 2017 को या बाद में तीर्थंकर महावीर विश्वविद्यालय, मुरादाबाद, उत्तर प्रदेश द्वारा प्रदत्त होगी।

नोट:
1. प्रदान की गई ऐसी मान्यता अधिसूचना की तारीख से अधिकतम 5 वर्ष के लिए होगी और उसके बाद इसका नवीकरण करवाना होगा।
2. मान्यता के 'नवीकरण' की प्रक्रिया वही होगी जो मान्यता प्रदान करने के लिए लागू होती है।
3. अपेक्षित मान्यता का समय से नवीकरण करवाने में विफल रहने पर, परिणामस्वरूप, निरपवाद रूप से, संबंधित स्नातकोत्तर कोर्सों में प्रवेश बंद हो जाएगा।

[फा. सं.यू-12012/71/2018-एमई.।(एफटीएस.3165307)]

डी. वी. के. राव, अवर सचिव

New Delhi, the 31st July, 2018

S.O. 1274.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said Schedule -

(i) against "Dr. NTR University of Health Sciences, Vijaywada, A.P", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Magistrar Chirurgiae Paediatric Surgery"	M.Ch (Paediatric Surgery) (This shall be a recognized medical qualification when granted by Dr. NTR University of Health Sciences, Vijaywada, A.P in respect of students being trained at Guntur Medical College, Guntur on or after 2017.

(ii) against "Ch. Charan Singh University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Doctor of Medicine (Radiodiagnosis)"	MD (Radiodiagnosis) (This shall be a recognized medical qualification when granted by Ch. Charan Singh University in respect of students being trained at Saraswati Institute of Medical Sciences, Hapur on or after 2017).

(iii) against "Rajiv Gandhi University of Health Sciences, Bangalore", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Doctor of Medicine/Master of Surgery (Ophthalmology)"	MD/MS (Ophthalmology) (This shall be a recognized medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore in respect of students being trained at Hassan Institute of Medical Sciences, Hassan, on or after 2017).

iv) against "Madhya Pradesh Medical Science University, Jabalpur", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:-

(2)	(3)
"Doctor of Medicine (Microbiology)"	MD (Microbiology) (This shall be a recognized medical qualification when granted by Madhya Pradesh Medical Science University, Jabalpur in respect of students being trained at Gajra Raja Medical College, Gwalior, on or after 2017).

(v) against "Kerala University of Health Sciences, Thrissur", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Doctor of Medicine (Radio diagnosis/ Radiology)"	M.Ch (Neurosurgery) (This shall be a recognized medical qualification when granted by Kerala University of Health Sciences, Thrissur in respect of students being

	trained at T.D Medical College, Alappuzha or after 2016).
"Master of Surgery (Orthopedics)	MS (Orthopedics) (This shall be a recognized medical qualification when granted by Kerala University of Health Sciences, Thrissur in respect of students being trained at Academy of Medical Sciences, Pariyaram, Kannur or after 2016).

(vi) against "NIMS University (Deemed University), Jaipur", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Doctor of Medicine (Psychiatry)"	MD (Psychiatry) (This shall be a recognized medical qualification when granted by NIMS University (Deemed University), Jaipur in respect of students being trained at National Institute of Medical Sciences & Research, Jaipur or after 2017).

(vii) against "Santosh University, Ghaziabad", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Doctor of Medicine (Forensic Medicine)"	MD (Forensic Medicine) (This shall be a recognized medical qualification when granted by Santosh University, Ghaziabad in respect of students being trained at Santosh Medical College, Ghaziabad or after 2011).

(viii) against "Teerthanker Mahaveer University, Moradabad, Uttar Pradesh", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Doctor of Medicine (Pharmacology)"	MD (Pharmacology) (This shall be a recognized medical qualification when granted by Teerthanker Mahaveer University, Moradabad, Uttar Pradesh in respect of students being trained at Teerthanker Mahaveer Medical College and Research Centre, Moradabad, Uttar Pradesh or after 2018).
"Master of Surgery (ENT)"	MS (ENT) (This shall be a recognized medical qualification when granted by Teerthanker Mahaveer University, Moradabad, Uttar Pradesh in respect of students being trained at Teerthanker Mahaveer Medical College and Research Centre, Moradabad, Uttar Pradesh or after 2017).

Note:

1. The recognition so granted shall be for a maximum period of' 5 years from the date of notification, upon which it shall have to be renewed.

2. The procedure for 'Renewal' of recognition shall be same as applicable for the award for recognition.

3. Failure to seek timely renewal of recognition as required shall invariably result in stoppage of admissions to the concerned Postgraduate Courses

[F. No.U.12012/71/2018-ME-I (FTS -3165307]

D. V. K. RAO, Under Secy.

नई दिल्ली, 1 अगस्त, 2018

का.आ. 1275.—मंत्रालय की अधिसूचना सं.यू.12012/01/2017-एमई-I(पी-7) दिनांक 29.12.2017 के अनुक्रम में केन्द्र सरकार एतदद्वारा, कॉलेज प्राधिकारियो द्वारा प्रवेश रोके जाने के कारण, भारतीय आयुर्विज्ञान परिषद अधिनियम,1956 की प्रथम अनुसूची में, निम्नलिखित और संशोधन करती है।

उक्त प्रथम अनुसूची में 'मान्यता प्राप्त आयुर्विज्ञान अर्हता' शीर्षक के अधीन [जिसे इसके आगे कालम (2) कहा गया है] "एनआरआई मेडिकल कॉलेज एंड जनरल अस्पताल, गुंटूर, आंध्र प्रदेश" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"डिप्लोमा इन ओटोरहिनोलिरिंगोलोजी"	डीएलओ (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह केवल 2017-18 अकादमिक सत्र तक प्रवेश पाए छात्रों के संबंध में, डॉ.एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा, आंध्र प्रदेश द्वारा प्रदत्त होगी।

[फा. सं. यू-12012/28/2016-एमई. I]

डी. वी. के. राव, अवर सचिव

New Delhi, the 1st August, 2018

S.O. 1275.—In continuation to the Ministry's Notification No.U.12012/01/2017-ME-I(P-7) dated 29.12.2017, the Central Government, hereby makes the following further amendments in the First Schedule to the Indian Medical Council Act, 1956 due to stoppage of admission by the college authorities:-

In the qualifications mentioned against **"NRI Medical College & General Hospital, Guntur, Andhra Pradesh"** under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], against the following qualifications and entry relating thereto under the heading 'Abbreviation for Registration"[hereinafter referred to as column (3)], the following shall be inserted, namely—

(2)	(3)
"Diploma in Otorhinolaryngology"	DLO (This shall be a recognized medical qualification when granted by Dr. NTR University of Health Sciences, Vijayawada, Andhra Pradesh in respect of students admitted upto the academic session 2017-18 only.)

[F. No. U.12012/28/2016-ME.I]

D. V. K. RAO, Under Secy.

नई दिल्ली, 9 अगस्त, 2018

का.आ. 1276.—भारतीय आयुर्विज्ञान परिषद अधिनियम,1956(1956 का 102) की धारा 11 की उप धारा(2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार, भारतीय आयुर्विज्ञान परिषद से परामर्श करके उक्त अधिनियम की प्रथम अनुसूची में, निम्नलिखित, और संशोधन करती है, अर्थात्:—

उक्त प्रथम अनुसूची में

(i) 'मान्यताप्राप्त [आयुर्विज्ञान अर्हता'शीर्षक के अधीन[जिसे इसके आगे कालम(2) कहा गया है] "केरल स्वास्थ्य विज्ञान विश्वविद्यालय, तृश्शूर, केरल" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"डॉक्टर ऑफ मेडिसिन(गेस्ट्रोएंट्रोलोजी)"	एमडी(गेस्ट्रोएंट्रोलोजी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह गवर्नमेंट मेडिकल कॉलेज, कोट्टायम, केरल में 2016 को या बाद में प्रशिक्षित किए गए छात्रों के संबंध में केरल स्वास्थ्य विज्ञान विश्वविद्यालय, तृश्शूर, केरल द्वारा प्रदत्त होगी।)

(ii) 'मान्यताप्राप्त [आयुर्विज्ञान अर्हता' शीर्षक के अधीन[जिसे इसके आगे कालम (2) कहा गया है] "गुजरात विश्वविद्यालय, अहमदाबाद" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"डॉक्टर ऑफ मेडिसिन (पैथॉलोजी)"	एमडी (पैथॉलोजी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह अहमदाबाद म्युनिसिपिल कार्पोरेशन मेडिकल एज्युकेशन ट्रस्ट मेडिकल कॉलेज, अहमदाबाद में 2018 को या बाद में प्रशिक्षित किए गए छात्रों के संबंध में गुजरात विश्वविद्यालय, अहमदाबाद द्वारा प्रदत्त होगी।)

(iii) 'मान्यताप्राप्त [आयुर्विज्ञान अर्हता'शीर्षक के अधीन [जिसे इसके आगे कालम(2) कहा गया है] "पदमश्री डॉ. डी. वाई.पाटिल विश्वविद्यालय, नबीं मुंबई" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"डॉक्टर ऑफ मेडिसिन(इमरजेंसी मेडिसिन)"	एमडी(इमरजेंसी मेडिसिन) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह पदमश्री डॉ. डी. वाई.पाटिल मेडिकल कॉलेज, नबीं मुंबई में 2015 को या बाद में प्रशिक्षित किए गए छात्रों के संबंध में पदमश्री डॉ. डी. वाई.पाटिल विश्वविद्यालय, नबीं मुंबई द्वारा प्रदत्त होगी।)

(IV) 'मान्यता प्राप्त आयुर्विज्ञान अर्हता'शीर्षक के अधीन [जिसे इसके आगे कालम (2) कहा गया है] "राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलुरू" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम(3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:—

(2)	(3)
"मास्टर ऑफ सर्जरी(सोशल एंड प्रिवेंटिव मेडिसिन/मेडिसिन/कम्युनिटी)"	एमएस (सोशल एंड प्रिवेंटिव मेडिसिन/ मेडिसिन/ कम्युनिटी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह खाजा बंदा नवाज इंस्टिट्यूट ऑप मेडिकल सांइसिस, गुलबर्गा में 2017 को या बाद में प्रशिक्षित किए गए छात्रों के संबंध में,

	राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलुरू द्वारा प्रदत्त होगी।)
"डॉक्टर ऑफ मेडिसिन(इमरजेंसी मेडिसिन)"	"डॉक्टर ऑफ मेडिसिन(इमरजेंसी मेडिसिन)" यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह एम. एस. रामय्या मेडिकल सांइसिस, गुलबर्गा में 2017 को या बाद में प्रशिक्षित किए गए छात्रों के संबंध में, राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलुरू द्वारा प्रदत्त होगी।)

नोट:

1. ऐसी दी गई मान्यता अधिसूचना की तारीख से 5वर्ष के लिए होगी और उसके बाद इसका नवीकरण करवाना होगा।
2. मान्यता के 'नवीकरण' की प्रक्रिया वही होगी जो मान्यता प्रदान करने के लिए लागू होती है।
3. अपेक्षित मान्यता का समय से नवीकरण करवाने में विफल रहने पर, परिणामस्वरूप, निरपवाद रूप से, संबंधित स्नात्कोत्तर कोर्स में प्रवेश बंद हो जाएगा।

[फा. सं. यू-12012/81/2018-एमई-1 (एफटीएस नं.3166942)]

डी. वी. के. राव, अवर सचिव

New Delhi, the 9th August, 2018

S.O. 1276.— In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said Schedule —

(i) against "Kerala University of Health Sciences, Thrissur", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Doctor of Medicine (Gastroenterology)"	MD (Gastroenterology) (This shall be a recognized medical qualification when granted by Kerala University of Health Sciences, Thrissur in respect of students being trained at Government Medical College, Kottayam on or after 2016.

(ii) against "Gujarat University, Ahmedabad", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Doctor of Medicine (Pathology)"	MD (Pathology) (This shall be a recognized medical qualification when granted by Gujarat University, Ahmedabad in respect of students being trained at Ahmedabad Municipal Corporation Medical Education Trust Medical College, Ahmedabad on or after 2018).

iii) against "Padamshree Dr. D.Y. Patil University, Navi Mumbai", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Doctor of Medicine (Emergency Medicine)"	MD (Emergency Medicine) (This shall be a recognized medical qualification when granted by Padamshree Dr. D.Y. Patil University,

	Navi Mumbai in respect of students being trained at Padamshree Dr. D.Y. Patil Medical College, Navi Mumbai, on or after 2015).

(iv) against "Rajiv Gandhi University of Health Sciences, Bangalore", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Master of Surgery (Social & Preventive Medicine/ Medicine/Community)	MS (Social & Preventive Medicine/Medicine/Community (This shall be a recognized medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore in respect of students being trained at Khaja Banda Nawaz Institute of Medical Sciences, Gulbarga, on or after 2017).
"Doctor of Medicine (Emergency Medicine)"	MD (Emergency Medicine) (This shall be a recognized medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore in respect of students being trained at M.S. Ramaiah Medical College, Bangalore, on or after 2017).

Note:

1. The recognition so granted shall be for a maximum period of' 5 years from the date of notification, upon which it shall have to be renewed.
2. The procedure for 'Renewal' of recognition shall be same as applicable for the award for recognition.
3. Failure to seek timely renewal of recognition as required shall invariably result in stoppage of admissions to the concerned Postgraduate Courses.

[F. No. U.12012/81/2018-ME-I (FTS -3166942]

D. V. K. RAO, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 28 अगस्त, 2018

का.आ. 1277.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी की गई भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का. आ. 3238(अ), तारीख 2 जुलाई, 2018 भारत के राजपत्र, भाग II, खंड 3, उप-खंड (ii), तारीख 4 जुलाई, 2018 द्वारा प्रकाशित होने पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और ऐसी भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है), में या उस पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए है;

और, केन्द्रीय सरकार को यह समाधान हो गया है कि दामोदर घाटी निगम, डीवीसी टावर्स, कोलकाता (जिसे इसमें इसके पश्चात् "सरकारी कंपनी" कहा गया है), ऐसे निबंधनों और शर्तों का जिन्हें केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त भूमि में या उस पर के सभी अधिकार केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, तारीख 4 जुलाई, 2018 से निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए उक्त सरकारी कंपनी में निहित हुआ समझा जायेगा, अर्थात्:—

(1) सरकारी कंपनी,उक्त अधिनियम के उपबंधों और अन्य सुसंगत विधि के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानी इत्यादि से संबंधित और वैसी ही मदों की बाबत् सभी संदाय करेगी ;

(2) सरकारी कंपनी द्वारा शर्त (1) के अधीन, संदेय रकम का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और उक्त अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में, उपगत सभी व्यय, उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार, निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में अपील आदि विधिक कार्यवाहियों की बाबत उपगत सभी व्यय भी सरकारी कंपनी द्वारा वहन किए जाएंगे ;

(3) सरकारी कंपनी, केन्द्रीय सरकार, उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में पूर्वोक्त अधिकारों के बारे में केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो ;

(4) सरकारी कंपनी के पास केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि में इस प्रकार निहित पूर्वोक्त अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिये जाएं या अधिरोपित किए जाएं।

[फा.सं. 43015/34/2017-एलए एण्ड आईआर]

राम शिरोमणि सरोज, अवर सचिव

MINISTRY OF COAL

New Delhi, the 28th August, 2018

S.O. 1277.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 3238(E), dated the 2nd July, 2018, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 4th July, 2018, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and all rights in or over the lands described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas, the Central Government is satisfied that the Damodar Valley Corporation, DVC Towers, Kolkata (hereinafter referred to as "the Government Company") is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that all rights in or over the said land so vested shall, with effect from the 4th July, 2018 instead of continuing to vest in the Central Government, be deemed to have been vested in the said Government Company, subject to the following terms and conditions namely:—

(1) the Government Company shall make all payments in respect of compensation, interest, damages, etc. and the like, as determined under the provisions of the said Act and other relevant law;

(2) a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amount payable by the Government Company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the said Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc., for or in connection with the rights, in or over the said land, so vested, shall also be borne by the Government Company;

(3) the Government Company shall indemnify the Central Government, its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the aforesaid rights in the said land so vested;

(4) the Government Company shall have no power to transfer the aforesaid rights in the said land so vested, to any other person without the prior approval of the Central Government ; and

(5) the Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land as and when necessary.

[F. No. 43015/34/2017–LA & IR]

RAM SHIROMANI SAROJ, Under Secy.

नई दिल्ली, 30 अगस्त, 2018

का.आ. 1278.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 7 की उप-धारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का. आ. 1103(अ), तारीख 09 मार्च, 2018 द्वारा और भारत के राजपत्र, भाग II, खण्ड 3, उप-खण्ड (ii), तारीख 12 मार्च, 2018 में प्रकाशित की गई थी, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट 30.00 हेक्टेयर (लगभग) या 74.13 एकड़ (लगभग) माप वाली भूमि में या उस पर के सभी अधिकारों का अर्जन करने के अपने आशय की सूचना दी थी ;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है ;

और केन्द्रीय सरकार का पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात् और पश्चिम बंगाल सरकार के परामर्श करने के पश्चात् यह समाधान हो गया है कि इससे संलग्न अनुसूची में यथावर्णित 30.00 हेक्टेयर (लगभग) या 74.13 एकड़ (लगभग) माप वाली भूमि में या उस पर के सभी अधिकारों का अर्जन किया जाना चाहिए;

अत:, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 9 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि, इससे संलग्न अनुसूची में यथावर्णित 30.00 हेक्टेयर (लगभग) या 74.13 एकड़ (लगभग) माप वाली भूमि में या उस पर के सभी अधिकार अर्जित किए जाते हैं ;

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक संख्या जीएम/जेएनआर/लैंड/सीबीए/2018/119, तारीख 16 जून, 2018 का निरीक्षण जिला कलक्टर, पश्चिम बर्दवान, पश्चिम बंगाल के कार्यालय या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता–700001 के कार्यालय या निदेशक तकनीकी, परियोजना और योजना, ईस्टर्न कोलफील्ड्स लिमिटेड, संक्टोरिया, डाकघर दिशेरगढ़, जिला पश्चिम बर्दवान, पश्चिम बंगाल - 713333 के कार्यालय में किया जा सकता है।

अनुसूची

झांजरा – जामगोरा ब्लॉक, रानीगंज कोलफील्ड्स

जिला - बर्दवान (पश्चिम बंगाल)

[रेखांक संख्या जीएम/जेएनआर/लैंड/सीबीए/2018/119, तारीख 16 जून, 2018]

सभी अधिकार:

क्रम सं॰	मौजा (ग्राम)	जे.एल. संख्या	पुलिस स्टेशन (थाना)	जिला	क्षेत्र हेक्टेयर में	टिप्पणियां
1.	तिलबोनी	20	फरीदपुर	बर्दवान	0.85	भाग
2.	लौदोहा	21	फरीदपुर	बर्दवान	6.26	भाग
3.	चक लौदोहा	22	फरीदपुर	बर्दवान	14.64	भाग
4.	जामगोरा	23	फरीदपुर	बर्दवान	8.25	भाग
कुल: 30.00 हेक्टेयर (लगभग) या 74.13 एकड़ (लगभग)						

1. मौजा-जामगोरा में अर्जित किए गए प्लाट संख्यांक: 510 (भाग), 533 (भाग), 534 से 537, 481 (भाग), 540 (भाग), 544 (भाग), 545 से 556, 559 (भाग), 611 और 611/3374.

2. मौजा- चक लौदोहा में अर्जित किए गए प्लाट संख्यांक: 13 (भाग), 48 (भाग), 49 (भाग), 50 से 54, 55 (भाग), 77, 78, 79 (भाग), 89 (भाग), 90 से 98, 100 से 118, 119 (भाग), 120, 124 (भाग), 72/151 (भाग) और 103/176.

3. मौजा-लौदोहा में अर्जित किए गए प्लाट संख्यांक: 599 से 601, 631 (भाग), 632 से 635, 636 (भाग), 638 (भाग), 639, 640, 641 (भाग), 642, 643, 702, 708 (भाग), 711 (भाग), 713 से 715, 716 (भाग), 717 (भाग) और 718 (भाग).

4. मौजा- तिलाबोनी में अर्जित किए गए प्लाट संख्यांक: 325, 327, 333 (भाग), 334, 335 (भाग), 336, 337 (भाग) और 339.

सीमा वर्णन:

पैच - 1

क-ग	रेखा, बिंदु 'क' से प्रारंभ होती है (जोकि शुरुआती बिन्दु है प्रस्तावित क्षेत्र का और पूर्वी भाग प्लॉट संख्या 481 मौज़ा – जामगोरा का) और बिन्दु 'ख' के बीच से जोकि प्लॉट संख्या 544 का उत्तरी और पश्चिमी सीमा रेखा है मौजा जामगोरा से होकर और बिन्दु बिन्दु 'ग' पर मिलती है (जोकि सामान्य बिन्दु है प्लॉट संख्या 151 मौजा चक – लौदोहा और उत्तर-पश्चिमी कोना है प्लाट संख्या 545 मौजा – जामगोरा का)।
ग-थ	रेखा, बिन्दु 'ग' से प्रारंभ होती है और बिंदु 'घ', 'ड.', 'च', 'छ', 'ज', 'झ', 'ञ', 'ट, 'ठ', 'ड' 'ढ' और 'त' से गुजरते हुए मौज़ा – चक लौदोहा के प्लॉट संख्या 151 के उत्तरी और पश्चिमी भाग, प्लॉट संख्या 98, 77, 78 उत्तर सीमा, प्लॉट संख्या 55 के बीच, प्लॉट संख्या 54, 52, 51, प्लॉट संख्या 150 के पश्चिमी सीमा, प्लॉट संख्या 13 और 49, 48 के बीच से होकर और बिन्दु 'थ' पर मिलती है (जोकि प्लॉट संख्या 611 और 610 मौज़ा- जामगोरा का पश्चिमी कोना है)।
थ- द	रेखा, बिन्दु 'थ' से प्रारंभ होती है और प्लॉट संख्या 611 की मौज़ा- जामगोरा के दक्षिणी सीमा के बीच से गुजरती है और बिन्दु 'द' पर मिलती है (जोकि पूर्वी सीमा के प्लॉट संख्या 611 मौज़ा जामगोरा और प्लॉट संख्या 79 की मौज़ा-चक लौदोहा की पश्चिमी सीमा रेखा का)।
द-ध	रेखा, बिन्दु 'द' से प्रारंभ होती है और प्लॉट संख्या 79 के दक्षिणी सीमा रेखा के बीच से होकर , प्लॉट संख्या 89 के उत्तरी भाग से, प्लॉट संख्या 110 के दक्षिणी सीमा रेखा से, प्लाट संख्या 124 के उत्तरी भाग से, प्लाट सयंख्या 120 के दक्षिण-पश्चिमी, प्लॉट संख्या 119 के मध्य से होते हुए और बिन्दु 'ध' पर मिलती है (जोकि प्लॉट संख्या 117 मौज़ा- चक लौदोहा का दक्षिण-पश्चिमी कोना है)।
ध – क	रेखा, बिन्दु 'ध' से प्रारंभ होती है और बिन्दु 'न' से होते हुए प्लॉट संख्या 561, 558, 557 की उत्तरी सीमा रेखा से, प्लॉट संख्या 533 के बीच से, प्लॉट संख्या 529 के ऊपर से, प्लॉट संख्या 510 के पश्चिमी भाग से, प्लॉट संख्या 537 के दक्षिण-पूर्वी सीमा से, प्लॉट संख्या 510 के पश्चिमी भाग से, प्लॉट संख्या 538 मौज़ा- जामगोरा की उत्तरी सीमा से होते हुए और बिन्दु 'क' पर मिलती है (जोकि शुरुआती बिन्दु है प्रस्तावित क्षेत्र और प्लॉट संख्या 481 मौज़ा- जामगोरा का)।

पैच 2

1 – 9	रेखा, बिन्दु 1 से प्रारंभ होती है (जोकि प्लॉट संख्या 702 मौज़ा- लौदोहा का उत्तर-पूर्वी कोना है) और बिन्दु 2, 3, 4, 5, 6, 7 और 8 से गुजरती है और प्लॉट संख्या 702 की उत्तरी सीमा रेखा के बीच से, प्लॉट संख्या 708 की पूर्वी, उत्तरी और पश्चिमी सीमा रेखा से, प्लॉट संख्या 711, 713, 714, 715, 642 की उत्तरी सीमा रेखा से, प्लॉट संख्या 638 के बीच से, प्लाट संख्या 636 के बीच और उत्तरी सीमा रेखा से, प्लॉट संख्या 631 के दक्षिणी भाग से, प्लॉट संख्या 632 के उत्तरी- पश्चिम कोने से, प्लॉट संख्या 601 के पूर्वी, उत्तरी और पश्चिमी सीमा रेखा से होते हुए और बिन्दु 9 पर मिलती है (जोकि प्लॉट संख्या 599 मौज़ा- लौदोहा का उत्तरी-पश्चिम कोना है)।
9 – 12	रेखा, बिन्दु 9 से प्रारंभ होती है और बिन्दु 10 और 11 से हाते हुए प्लॉट संख्या 325 की पश्चिमी और दक्षिणी सीमा है, प्लॉट संख्या 327 की दक्षिणी सीमा रेखा, प्लॉट संख्या 333, 335, 337, 641 और 718 मौज़ा- तिलाबोनी के बीच से होते हुए और बिन्दु 12 पर मिलती है (जोकि प्लाट संख्या 718 की मौज़ा- लौदोहा की पूर्वी सीमा है)।
12- 1	रेखा, बिन्दु 12 से प्रारंभ होती है और प्लॉट संख्या 717, 716, 711 और 708 मौज़ा- लौदोहा के बीच से होते हुए और बिन्दु 1 पर मिलती है (जोकि प्लाट संख्या 702 मौज़ा- लौदोहा का उत्तर-पूर्वी कोना है)।

[फा.सं. 43015/15/2017-एलए एण्ड आईआर]

राम शिरामणि सरोज, अवर सचिव

New Delhi, the 30th August, 2018

S.O. 1278 .—Whereas by the notification of the Government of India in the Ministry of Coal S.O. number 1103 (E), dated the 09th March, 2018, issued under sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act) and published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 12th March, 2018, the Central Government gave notice of its intention to acquire the lands measuring 30.00 hectares (approximately) or 74.13 acres (approximately) and all rights in or over such land specified in the Schedule appended to that notification;

And whereas, the Competent Authority in pursuance of section 8 of the said Act has made his report to the Central Government;

And whereas, the Central Government after considering the aforesaid report and after consulting the Government of West Bengal, is satisfied that the lands measuring 30.00 hectares (approximately) or 74.13 acres (approximately) and all rights in or over such lands as described in Schedule appended hereto should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9 of the said Act, the Central Government hereby declares that all rights in or over such lands measuring 30.00 hectares (approximately) or 74.13 acres (approximately) as described in Schedule annexed hereto, are hereby acquired.

The plan bearing number GM/JNR/LAND/CBA/2018/ 119, dated the 16th June, 2018 of the area covered by this notification may be inspected in the office of the Collector, Pashchim Burdwan, West Bengal or in the office of the Coal Controller, 1, Council House Street, Kolkata- 700001 or in the office of the Director Technical, Project and Planning, Eastern Coalfields Limited, Sanctoria, P.O. Dishergarh, District – Pashchim Burdwan, West Bengal– 713333.

SCHEDULE

Jhanjra – Jamgara Block, Raniganj Coalfields

District –Burdwan (West Bengal)

[Plan Bearing number GM/JNR/LAND/CBA/2018/ 119,dated the 16th June, 2018]

All Rights:

Sl. No.	Mouza (Village)	J.L. number	Police Station (Thana)	District	Area in hectares	Remarks
1.	Tilaboni	20	Faridpur	Burdwan	0.85	Part
2.	Laudoha	21	Faridpur	Burdwan	6.26	Part
3.	Chak Laudoha	22	Faridpur	Burdwan	14.64	Part
4.	Jamgora	23	Faridpur	Burdwan	8.25	Part
Total: 30.00 hectares (approximately) or 74.13 acres (approximately)						

1. Plot numbers acquired in Mouza- Jamgora: 510(P), 533(P), 534 to 537, 481(P), 540(P), 544(P), 545 to 556, 559(P), 611 and 611/3374.

2. Plot numbers acquired in Mouza- Chak Laudoha: 13(P), 48(P), 49(P), 50 to 54, 55(P), 77, 78, 79(P), 89(P), 90 to 98, 100 to 118, 119(P), 120, 124(P), 72/151(P) and 103/176.

3. Plot numbers acquired in Mouza- Laudoha: 599 to 601, 631(P), 632 to 635, 636(P), 638(P), 639, 640, 641(P), 642, 643, 702, 708(P), 711(P), 713 to 715, 716 (P), 717(P) and 718(P).

4. Plot numbers acquired in Mouza- Tilaboni: 325, 327, 333(P), 334, 335(P), 336, 337(P) and 339.

Boundary Description:

PATCH - 1

A – C Line starts from point A (the starting point of the proposed area and eastern part of plot number 481 of Mouza Jamgora) and passes through Point B the northern and western boundary line of plot number 544, of Mouza Jamgora and meets at point C (common point of plot number 151 of Mouza Chaklaudoha and north- western corner of plot number 545 of Mouza Jamgora) .

C – Q Line starts from point C and passes through point D, E, F, G, H, I, J, K, L, M, N, O and P the northern and western part of plot number 151 of Mouza Chaklaudoha, northern boundary of plot numbers

98,77, 78, middle of plot number 55, northern boundary of plot numbers 54, 52, 51, western boundary of plot number 150, through plot numbers 13 and 49, 48 and meets at point Q (western corner of plot number 611 and 610 of Mouza Jamgora).

Q – R	Line starts from point Q and passes through southern boundary line of plot number 611 of Mouza Jamgora and meets at point R (eastern boundary of plot number 611 of Mouza Jamgora and western boundary of plot number 79 of Mouza Chaklaudoha).
R – S	Line starts from point R and passes through southern boundary of plot number 79, northern part of plot number 89, southern boundary of plot number 110, northern part of plot number 124, south-western corner of plot number 120, middle of plot number 119 and meets at point S (south –west corner of plot number 117of Mouza Chaklaudoha).
S – A	Line starts from point S and passes to Point T along the northern boundary of plot numbers 561, 558, 557, middle of plot number 533, above northern part of plot number 529, western part of plot number 510, south eastern boundary of plot number 537, western part of plot number 510, northern boundary of plot number 538 of Mouza Jamgora and meets at point A (the starting point of the proposed area and eastern part of plot number 481 of Mouza Jamgora).

PATCH - 2

1 – 9	Line starts from point 1 (the north- east corner of plot number 702 of Mouza Laudoha) and passes through point 2, 3, 4, 5, 6, 7 and 8 along the northern boundary line of plot number 702, eastern, northern and western boundary of plot number 708, northern boundary of plot numbers 711, 713, 714, 715, 642, middle of plot number 638, middle and northern boundary of plot number 636, middle of plot number 631, north- west corner of plot number 632, east, north and west boundary of plot number 601 and meets at point 9 (north- west corner of plot number 599 of Mouza Laudoha) .
9 – 12	Line starts from point 9 and passes through point 10 and 11 along western and southern boundary of plot number 325, southern boundary of plot number 327, middle of plot numbers 333, 335, 337, 641 and 718 of Mouza Tilaboni and meets at point 12 (eastern boundary of plot number 718 of Mouza Laudoha) .
12- 1	Line starts from point 12 and passes through middle of plot number 717, 716, 711 and 708 of Mouza Laudoha and meets at point 1(the north- east corner of plot number 702 of Mouza Laudoha)

[F.No. 43015/15/2017- LA & IR]

RAM SHIROMANI SAROJ, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 16 अगस्त, 2018

का.आ. 1279.— केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962, (1962 का 50) की धारा 2 के खण्ड (अ) के अनुसरण में 01 अगस्त, 2014 को भारत के राजपत्र में प्रकाशित, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 1979(E) तारीख 28 जुलाई, 2014 में निम्नलिखित रूप में **संशोधन करती है**:

"श्री के. एस. रेड्डी, प्रचालन प्रबन्धक " **शब्दों के स्थान पर**, "श्री सी. राजेश कुमार, वरिष्ठ प्रचालन प्रबन्धक, " **शब्द रखे जाएंगे**।

यह अधिसूचना जारी होने की तारीख से लागू होगी ।

[फा. सं. आर-11025(11)/239/2017-ओआर-I/ई-13892]

पवन कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 16th August, 2018

S.O. 1279.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendment in the notification of Government of India in Ministry of Petroleum and Natural Gas S.O. 1979(E) dated 28th July 2014, published in the Gazette of India on 1st August, 2014 namely:

In the said notification, for the words "Shri K. S. Reddy, Operations Manager" the words "Shri C. Rajesh Kumar, Senior Operations Manager" shall be substituted.

The notification is applicable from the date of issue.

[F. No. R-11025(11)/239/2017-OR-I/E-13892]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 16 अगस्त, 2018

का.आ. 1280.—केन्द्रीय सरकार, पेट्रोलियम एवं खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन)अधिनियम, 1962, (1962 का 50), की धारा 2 के खंड (क) के अनुसरण में तारीख 23 जुलाई, 2017 से 29 जुलाई, 2017 को भारत के साप्ताहिक राजपत्र मे प्रकाशित, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ.1721, 4 जुलाई, 2017 में निम्नलिखित रूप से संशोधन करती है, अर्थात :-

उक्त अधिसूचना में, "श्री महेश कुमार" शब्दों के स्थान पर "श्री रति राम" शब्द रखे जाएंगे।

यह अधिसूचना जारी होने की तारीख से लागू होगी ।

[फा. सं. आर-11025(11)/239/2017-ओआर-I/ई-13892]

पवन कुमार, अवर सचिव

New Delhi, the 16th August, 2018

S.O. 1280.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962) the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas. S.O. No 1721 dated 4 July 2017, published in the weekly Gazette of India from 23 July, 2017 to 29 July, 2017 namely:-

In the Said Notification, for the words "Shri Mahesh Kumar" the words "Shri Rati Ram" shall be substituted.

This notification is applicable from the date of issue.

[F. No. R-11025(11)/239/2017-OR-I/E-13892]

PAWAN KUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1281.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, निदेशक, भारतीय कृषि अनुसंधान संस्थान, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 50/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.08.2018 को प्राप्त हुआ था।

[सं. एल-42011/14/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 21st August, 2018

S.O. 1281.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 50/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, Indian Agriculture Research Institute, New Delhi and their workmen, which was received by the Central Government on 16.08.2018.

[No. L-42011/14/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI

ID No. 50/2014

Ram Manohar Mehto and others
As represented by
The Executive Member Dainik Vetan Bhogi Karamchari Sangh,
Krishi Mela Maidan, Pusa,
IARI, Pusa, New Delhi. …Workmen/Claimants

Versus

The Director,
Indian Agriculture Research Institute,
IARI, New Delhi. …Management/ Respondent

AWARD

In the present case, matter was referred to this Tribunal, vide letter No.L-42011/14/2014/IR(DU) dated 12.03.2014 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether non payment of 1/30th of Pay at the minimum of relevant pay-scale +DA to the workman Shri Ram Manohar Mehto and others in the tune of instructions of F.No.24(6)/99-CPN dated 16.12.1988 and non regularization of their services till date are just, fair and legal ? If no, what relief the workmen concerned are entitled to ?

2. Both parties were put to notice and 92 Workmen namely R.M. Mehto and others filed statement of claim through authorised representative of the Dainik Vetan Bhogi Karamchari Sangh. As per the averments made in the claim petition, the workmen have been working under the Management as daily rated workmen since 1980 and list of such workmen showing their names, father's name and date of appointment is Annexure-A of the claim petition. The said workmen had put in 240 days regular service in each calendar year since the date of their initial appointment on daily rate till filing of the claim petition. It is alleged that as per judgement of Hon'ble Supreme Court in the case of Surinder Singh and others Vs. Engineer in Chief, CPWD, daily rated workmen are to be paid their wages at par with their regular counterpart workmen. Department of Personnel & Training (DOPT) had also issued necessary orders to all the Ministries/Govt. of India for implementation of above order of Hon'ble Apex Court. Indian Council of Agricultural Research had also issued an order dated 16/12/1988 to all its Institutes/Departments for implementation of aforesaid orders. It is also alleged that the Management of IARI, Pusa New Delhi has not granted the regular pay scale to these workmen at part with their regular counterpart despite aforesaid orders. The concerned workmen have been raising their demands regularly since long before the Management but to no avail and even they had served a notice of hunger strike w.e.f.8/4/2013 and thereafter they approached Conciliation Officer vide petition dated 25/4/2013 but to no result. Thus, prayer has been made for passing award for grant of temporary status w.e.f. 1/9/1993 to all eligible workmen/applicants; to pass award for grant of 1/30th of pay at minimum of relevant permanent pay scale as per order dated 16/12/1988 and to pass award for regularization of services of the workmen w.e.f. 11/12/2006 as per the scheme framed by the DOPT.

3. Management has resisted the claim of the Workman and filed written reply, taking preliminary objections that the present claim is vague as the claimants have failed to provide their nature of work and they have also failed to show that they were employed by the management of DPL's for performing the job as that similar to regular supporting staff and that they were not performing the work of seasonal or intermittent nature of job. It has been alleged that the claimants had not completed 240 days of service every year with the management and as such their claim for extending temporary status and regularization of their service is liable to be rejected. It is also alleged that since the orders have been made effective from 1/9/1993 and it was clear that the daily paid labour will not be eligible for grant of temporary status, if such daily paid labour will were not in employment as on 1/9/1993 and had not put in service for 240 days of continuous in that year. Such instructions were issued by ICAR vide letter dated 14/3/1995. It is further alleged that IARI has been paying all the employees their legitimate dues and other facilities in accordance with law. Prayer has been made for dismissal of claim petition.

4. Rejoinder was filed on behalf of the workmen/claimants, whereby the case as set up in the claim petition has been reiterated and allegations made in the written statement have been denied.

5. On the pleadings of the parties, following issues were framed on 15/3/2016 :-

(i) Whether the reference is not maintainable in view of the preliminary objections ?

(ii) As in terms of reference ?

6. The Claimants in support of their case examined as many as 90 witnesses who tendered their affidavits as WW1 to WW 90 respectively and they all relied on the documents Ex.WW1/1 to Ex.WW1/13, whereas Management did not adduce any evidence to rebut the case of the workmen despite number of opportunities were granted to it. As such, this Tribunal vide order dated 16/1/2018 was constrained to fix up the matter for arguments.

Issue No.1 and 2 :-

7. At the outset I may mention that though preliminary objection regarding locus standi of the Union in filing the claim petition was taken by the Management in its written statement, however A/R for the Management had not pressed the same and made statement before this Tribunal on 4/7/2016.

8. During pendency of the proceedings, an application was filed on behalf of the workmen for impleadment of remaining workmen, which was allowed by this Tribunal vide order dated 24/2/2015 and as such, the claim petition pertains to 102 workmen whose details are given in the Annexure-I (which is now marked as Mark C-1).

9. I may mention that deposition of WW1 Ram Manohar Mehto and other workmen is in line with the averments made in the claim petition. He deposed that he had been engaged by the Management on 16/11/1985 and as per instructions of his superiors, he used to do work like cutting grass, giving water in the fields and spreading pesticides etc. He filed on record the seniority list issued by DPL as Ex.WW1/1 wherein his name finds mentioned at Sl.No.51. Ex.WW1/2 is the copy of the order of Hon'ble Supreme Court in the matter of Surinder Singh Vs. Engineer in Chief, CPWD; Ex.WW1/3 is the copy of instructions/order dated 16-12-1988 issued by the Management; Ex.WW1/4 is the copy of the O.M. dated 6/6/2002 issued by the D.O.P.T. regarding regularization of daily rated/casual workers working in various departments of the Government and who have completed 240 days in a calendar yea; Ex.WW1/5 is the copy of the minutes/finding of the meeting of the Committee constituted by IARI concerning payment of wages and applications of various provisions of ESI Act/Scheme to the daily paid labourers working at their Institute; Ex.WW1/6 is the copy of recommendations dated 7/10/1999 made by National Bureau of Plan Genetic Resources, Pusa Campus, New Delhi to the effect that casual labourers deployed at NBPGR Exp.Stn., Issapur, are eligible for payment of same pay as that of regular Group D employees; Ex.WW1/7 is the copy of the letter dated 30/5/2012 whereby representation of Daily Paid Labourers working under the Management for implementation of order/guidelines dated 16/12/88 was forwarded by Chief Admn. Officer of IARI to the Deputy Secretary (CS), Indian Council of Agricultural Research (ICAR) Krishi Bhawan, New Delhi; Ex.WW1/9 is the reminder issued by IARI to ICAR, Krishi Bhawan; Ex.WW1/8 is the copy of the communication dated 10/1/2014 sent by ICAR to the Joint Director of IARI, conveying the decision that demand of daily paid labourers at IARI for grant of $1/30^{th}$ of pay at the minimum of relevant scale may not be acceded to; Ex.WW1/10 is the copy of letter whereby Asst.Chief Technical Officer of Farm Operation Services Unit of ICAR had furnished information to Asstt.Administrative Officer (Personnel-III), IARI, regarding nature of work being done by daily rated workers and their attendance sheet for the months of January, 2015 to March, 2015.; Ex.WW1/12 is the list of daily paid labourers who were paid ad-hoc bonus for the year 2001-02 and Ex.WW1/13 is purported to be copy of order dated 14/6/2016 issued by DOPT (but not filed on court record). Version of the other workmen who were examined as WW2 to WW90 is akin to the statement of WW1 and they also disclosed the seniority number at which their name found mentioned in the Seniority List Ex.WW1/1 issued by the Management. In cross examination, this witness as well as all other workmen who were examined as WW2 to WW90 denied the suggestion that they had not worked for 240 days in a calendar year and as such, they had not applied for regularization under the regularization of Management Scheme. They also denied the suggestion that they were not performing similar duties being performed by regular incumbents.

10. From the pleadings and evidence adduced on record by the parties, it is manifest that 102 Nos. of workmen (whose particulars are detailed in the list Mark-C-1) were engaged by the Management as daily rated labourers at different intervals between 16-11-1985 to 26/10/2002, and they were performing misc. duties as per requirement vis-à-vis cleaning the farm area and/or office premises, lifting bio-mass, cutting grass, cleaning drains, to make assistance in bowing and seeding of crops; to assist the Mechanics/Experts in lifting the equipments; to carry weights; shifting of old records, distribution of daks from one branch to another etc. etc., which fact is manifest from document Ex.WW1/10. Thus, it is apparent that work being performed by the workmen herein are of regular and perennial nature and that they have been entrusted with the same nature of work as is being done by regular employee of the Management. The Management has not adduced any evidence to the contrary to rebut the case of the workmen or to prove its stand that the workmen were simply engaged for seasonal and/or intermittent nature of work.

11. I may also mention that all the workmen in their depositions have specifically deposed that they worked under the Management for more than 240 days in a calendar year and denied the suggestion to the contrary given by the side of the Management. The Management has not adduced any evidence on record to rebut the case of the workmen. Needless to mention that casual/part time workers do come within the purview of definition of workman as provided under Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

12. As such, this Tribunal has no hesitation to hold that there exists relationship of Employer-employee between the Management and the claimants herein.

13. It is worthwhile to mention here that Indian Council of Agricultural Research had issued guidelines dated 16/12/1988 (Ex.WW1/3) inter-alia to the effect that the casual workers who have been entrusted with the same nature of work as is being done by a regular employee, may be paid @ $1/30^{th}$ of the pay at the minimum of the relevant pay scale plus dearness allowance for work for 8 hours a day. As discussed above, this Tribunal has already noticed that work being performed by the workmen herein are of regular and perennial nature and that they have been entrusted with the same nature of work as is being done by regular employee of the Management.

14. Hon'ble the Apex Court in the case of State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427 while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

"The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

15. In view of the above and the fact that since the workmen herein while performing their duties were doing the job as being done by a regular employee, they were very much eligible and entitled to the wages in terms of the guidelines/order dated 16/12/1988 as referred to above. Consequently, the action of the Management in not granting the workmen herein $1/30^{th}$ of pay at the minimum of relevant pay-scale + DA in terms of aforesaid guidelines dated 16/12/1988 (Ex.WW1/3) is unjustified, unfair and illegal.

16. Now the crucial question arises for consideration is whether the workmen herein are entitled to the relief of regularization of their services and if so, since when.

17. It is a matter of record that vide aforesaid guidelines/order dated 16/12/1988 (Ex.WW1/3) it was also directed that in so far as the regularization of casual workers who are doing the same type of job as that of regular employees is concerned, the same should be done according to the existing instructions as and when vacancies arises and that places vacated by such casual workers should not be filled up. The Management has not adduced any evidence on record to suggest as to what steps it has taken to regularize the services of the workmen in terms of the aforesaid circular and as to what prevented them to do so, particularly when the workmen have been doing the work as that is performed by a regular employee. It seems that the Management had engaged the workmen herein in irregular manner against sanctioned posts and thus, paying wages to them on regular basis for the last many many years.

18. It is also pertinent to mention here that the Constitution Bench of Hon'ble Supreme Court in the case of **Secretary State of Karnataka and others Vs. Uma Devi and others (civil appeal No. 3595-3612/1999 etc.)** had issued directions to the Union of India, State Govt. and their instrumentalities to take steps to regularize as a one time measure the services of qualified workers appointed against sanctioned posts in irregular manner. Pursuant thereto, Department of Personnel & Training, Govt. of India had issued an office memorandum dated 11/12/2006 (which is marked as Mark C-2) alongwith copy of the aforesaid judgment for implementation of the directions of the Apex Court.

19. The Management has not adduced any evidence as to what steps were taken by it for implementation of the order of the Hon'ble Supreme Court and as to why they have not regularized the services of the workmen herein despite issuance of Office Memorandum dated 11/12/2006 (Mark C-2) by the Department of Personnel & Training, Govt. of

India. To my mind, the workmen herein were/are eligible and entitled to be regularized in terms of the aforesaid office memorandum. As such, the action of the Management in not regularizing the services of the workmen is unjustified, unfair and illegal.

Relief :-

Having regard to the aforesaid facts and circumstances of the case, this Tribunal is of the considered view that the workmen/claimants are entitled to get 1/30th of pay at the minimum of relevant pay-scale + DA in terms of instructions bearing F.No.24(6)/99-CPN dated 16.12.1988 and they are also entitled to be regularized in terms of the DOPT's memo dated 11/2/2006. The award is passed accordingly.

Date : 08.08.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1282.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महानिदेशक (कार्य), सीपीडब्ल्यूडी, निर्माण भवन, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 2, दिल्ली के पंचाट (संदर्भ संख्या 43/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.08.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st August, 2018

S.O. 1282.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 43/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Director General (Works), CPWD, Nirman Bhawan, New Delhi and their workmen, which was received by the Central Government on 02.08.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, DWARKA COURTS COMPLEX : NEW DELHI

ID No. 43/2010

Shri Laljeet Yadav and 2 others,
CPWD Mazdoor Union,
Room No.95, Barracks No.1/10,
Jam Nagar House, Shahjahan Road,
New Delhi …Workmen

Versus

Director General (Works),
CPWD, Nirman Bhawan,
New Delhi 110011 …Management

AWARD

This is a claim filed directly by Shri B.K.Prasad on behalf of the Workmen/claimants namely Shri Laljeet Yadav s/o.late Munshi Yadav , Satish Kumar s/o. Sumer Singh and Ajay Kumar s/o. Bika Das under Section 2(A) of the Industrial Disputes Act (hereinafter referred to as "the Act"), with the averments that workmen Laljeet Yadav & Satish Kumar were engaged by the Management as Wiremen on 23/3/1988 and 20/10/98 respectively, whereas workman Ajay Kumar was engaged as Khalasi by the Management on 20/10/1998 and they all worked under Executive Engineer (Electrical), Division No.XIV, Sub Division IV, Pragati Maidan, New Delhi and their services were terminated illegally on 14/10/2009, in violation of the common order dated 23/11/2000 passed by Hon'ble High Court in CWPs Nos. 2888/99, 727/2000 and 728/2000, prohibiting the contract labour in CPWD. Pursuant thereto, Ministry of Labour

issued notification dated 21/7/2002 prohibiting the employment of workmen like wiremen, Khalasi etc. on contract basis. Thereafter the workmen herein & some others approached Conciliation Officer for grant of equal wages for equal work and for regularization of their services. After adopting necessary procedure, Appropriate Government vide its order dated 18/2/2005 referred the dispute to CGIT-cum-Labour Court No.2, New Delhi for adjudication, which was registered as ID No.20/2005 and culminated into Award passed on 19/9/2007, holding that the workmen are entitled to be treated as daily wager of the Management after 21/7/2002 and are entitled to all benefits of daily wagers. The Management assailed the said Award before Hon'ble High Court vide W.P. No. 7561/2008 which is still pending adjudication. Despite pendency of the said Writ, Shri Manoj Kumar Executive Engineer of Electrical Division XIV terminated the services of three workmen on 14/10/2009, without taking prior permission or intimating Hon'ble High Court. It has been pleaded that initially the workmen were working through fake contractor on a perennial nature of job and each of them have completed 240 days in a calendar year. The Management has violated all the norms and indulged in unfair labour practice while terminating the services of the workmen and did not issue one month notice or paid notice pay and compensation as required under Section 25F(a) and (b) of the Act and even cause of termination was not intimated to the workmen. Prayer has been made for reinstatement of the workmen into services w.e.f. 14/10/2009 on the same position with full back wages alongwith all consequential benefits.

2. The claim petition has been resisted by the Management who filed written statement and took preliminary objections that there has been no relationship of employer and employee between the Management and the claimants. The claimants being employees of the contracting agency did not come within the definition of "workman" as provided under Section 2(S) of the Act. The claimants were engaged by the contractor/s who were awarded contract by CPWD. The claimant had never been employees of the Management and they had not worked at any point of time under the direct supervision of the Management. The Executive Engineer acted as per rules and regulations Tenders are awarded after scrutinizing technical and financial credibility of the contractors and eligible party is selected for genuine agreement. The contractors employ their own labourers to execute the work awarded to them. The Management does not maintain any record of such contract labourer so deployed by the contractors. Prayer has been made for dismissal of the claim petition .

3. The claimant/workman filed rejoinder/replication and denied all the allegations made by the Management and reiterated their own case as set up in the claim petition.

4. On the pleadings of the parties, following issues were framed on 15/04/2013 :-

(1) Whether award dated 19/9/2007 passed in ID No.20/2005 titled as Laljeet Yadav and others Vs. Central Public Works Department, operation of which has been injucted by High Court of Delhi, creates obligation on the Management not to treat the claimants as contract labour during the interregnum period ? If so, its effet ?

(2) Whether claimants are entitled to relief of reinstatement in service of the management ?

5. The Claimants in support of their case examined themselves as W.W.1 to WW3 and tendered their respective affidavits Ex.WW1/A to Ex.WW1/C and relied on the documents Ex.WW1/1 to WW1/3.

6. On the other hand, the Management in order to rebut the case of the claimants examined Shri M.P.Sharma, Executive Engineer, Electrical Division-XIV, CPWD as MW1, who tendered his evidence by way of affidavit Ex.MW1/A alongwith documents Ex.MW1/1 to Ex.MW1/12.

Issue No. 1 and 2 :

7. Both these issues are being taken up together for the purpose of discussion and they can be conveniently disposed of.

8. Testimony of the workmen who appeared in the witness box as WW1 to WW3 is in line with the averments made in the claim petition. According to them, they were under the employment of Management/CPWD through contractors for perennial nature of job and have completed more than 240 days in a calendar year before they were terminated on 14/10/2009 by one Shri Manoj Kumar, Executive Engineer (Electrical), CPWD by indulging in unfair labour practices. The Management even did not pay one month's notice or notice pay etc. to them prior to their termination. In the cross examination, they stated that no appointment letter was issued to them by CPWD and that one Thekedar (contractor) would come and pay the salary/wages to them and other workers.

9. MW1 M.P.Sharma, the sole witness examined by the Management deposed that it was the contractor/s who engaged the workman for completion of the job assigned to the contractors as per contract. In fact, the workmen did not work at any point of time under the direct control & supervision of the Management. He filed on record copies of agreements Ex.MW1/1 to Ex.MW1/11 to stress that for the work of running and maintenance of EI DG & Pump Set, contracts were awarded on annual basis to different eligible contractor/s after scrutinizing their technical and financial creditability. In cross examination, this witness admitted that workmen concerned were continuously employed even after change of contractors from time to time. To the query whether any notice or notice pay & compensation was paid

by the Management to the workmen at the time of their termination, this witness replied that since workmen were employees of contractors, it was not required.

10. It is a matter of record that vide common order dated 23/11/2000 (Ex.WW1/1) passed in CWP No.2888/99, 727/2000 and 728/2000 in relation to contract labour workers who were engaged by different contractors of Central Public Works Department and who were working in the Electrical Division of CPWD as Wiremen, Hon'ble High Court of Delhi had given following directions to the respondents viz. UOI and CPWD :-

1. The services of these contract workers shall not be substituted with other contract workers i.e. if the respondent require to employ contract workers in the jobs assigned to these contract workers, then they will not replace the present contract workers with fresh contract workers.

2. In case of contract with a particular contractor who has engaged these petitioners/contract workers comes to an end, the said contract may be renewed and if that is not possible and the contract is given to some other contractor, endeavour should be made to continue these contract workers with the new contractor. It would be without prejudice to the respective stand of the parties before the "appropriate government" and their continuation would depend upon the decision taken by the Govt to abolish or not to abolish the contract labour system.

3. These directions shall not apply in those cases where the particular contract of maintenance etc. given by other establishment to the CPWD earlier has ceased to operate with the result that CPWD is not having the work/contract any longer. In those cases it would be open to the CPWD to disengage such contract workers as not required any longer in the absence of work/job/particular activity with the CPWD.

4. If the decision is taken to abolish the contract labour in particular job/work/process in any of the office/establishments of CPWD (as per the terms of reference contained in Resolution dated 30th March, 2000), as per the judgement of the Supreme Court in Air India Statutory Corporation (supra), such contract workers would be entitled to be absorbed with CPWD and would be entitled to claim the benefits in terms of aforesaid judgement. In case the decision of the "appropriate Government" is not to abolish contract labour system in any of the works/job/ process in any offices/establishments of CPWD, the effect of that would be that contract labour system is permissible and in that eventuality CPWD shall have the right to deal with these contract workers in any manner it deems fit.

5. Such contract labours who are still working shall be paid their wages regularly as per the provisions of Section 21 of the Act and in those cases where the contractor fails to make payment of wages, it shall be the responsibility of the CPWD –the principal employer to make the payment of wages.

6. The exercise undertaken by the "appropriate Government" u/section 10 of the Act starting with the formation of a Committee by Resolution dated 30th March, 2000 should be completed as expeditiously as possible and in any case within a period of six months from today."

11. Govt. of India issued notification dated 31/7/2002 (Ex.W"W1/2) under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 (in short "CLRA Act"), thereby prohibiting employment of contract labour in the offices/establishments of CPWD for the process, operation or work specified in the Schedule appended therein, which inter-alia included Electrician, Wiremen, Khalasi (Electrical), Fitter, Plumber, Mechanic etc. etc.

12. It is worthwhile to mention here that in a celebrated decision in the case of ***Steel Authority of India Ltd. Vs. National Union Waterfront Workers, (2001) 7 SCC 1,*** the Apex Court while extracting provisions of Section 10 of CLRA Act observed in para 68 that following consequences do follow on issuing a notification under Section 10(1) of the CLRA Act :-

(1) Contract labour working in the establishment concerned at the time of issue of notification will cease to function;

(2) The contract of principal employer with the contractor in regard to the contract labour comes to an end;

(3) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter;

(4) the contract labour is not rendered unemployed as it generally assumed but continues in the employment of the contractor as the notification does not severe the relationship of master and servant between the contractor and the contract labour;

(5) the contractor can utilize the services of the contract labour in any other establishment in respect of which no notification under Section 10(1) has been; issued where all the benefits under the CLRA Act which were being enjoyed by it, will be available';

(6) if a contractor intends to retrench his contract labour, he can do so only in conformity with the provisions of ID Act.

After taking note of the definition of the terms "contract labour", "contractor", "principal employer" and "workman", as provided in CLRA Act and decisions in other cases, the Constitution Bench of Apex Court observed in para 105 as under :-

> "The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the Legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labour and authorizes in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. **But, the presence of some or all those factors, in our view provides no ground for absorption of contract labour on issuing notification under sub-section (1) of Section 10.** Admittedly, when the concept of automatic absorption of contract labour as a consequence of issuing notification under Section 10(1) by the appropriate Govt. is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 13 of the CLRA Act is explicitly provided in Sections 23 and 25 of CLRA Act. It is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Section 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impressible. We have already held above, on consideration of various aspects that it is difficult to accept that Parliament intended absorption of contract labour on issue of abolition notification under Section 10(1) of CLRA Act."

The decision rendered by the Apex Court makes it amply clear that even where the work of an establishment is carried out by employment of contract labour prohibited because of the notification issued under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour can be ordered.

13. The Hon'ble Supreme Court in the case of **Steel Authority of India (supra)** also laid down detailed principles in regard to service conditions of the contract labour coming up for adjudication subsequent to issuance of prohibition notification and the same are reproduced hereunder for the sake of convenience :-

> 125(5)-On issuance of prohibition notification under Sec. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Tribunal/Court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder**. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of the following para 6 hereunder.**
>
> 125(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the Appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment, the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualification other than technical qualifications."

14. It is a matter of record that an award dated 19/9/2007 (Ex.WW1/3) was passed by Central Govt. Industrial Tribunal No.II whereby workmen Laljeet Yadav and others who were performing their duties as Wiremen and/or Khaslasi under Electrical Division No.4, Sub-Division No.2, CPWD were held entitled to be treated as daily wager of the Management after 21/7/2002 inasmuch as the Management had continued them after 21/7/2002 even after prohibition of contract labour. The workmen were also held entitled to all benefits of daily wagers.

15. It is also a matter of record that the Management has assailed the aforesaid Award dated 19/9/2007 (ExWW1/3), by moving W.P. No. 7561/2008 which is still pending adjudication before Hon'ble High Court. Management has filed on record copy of the order dated 24/10/2008 whereby Hon'ble High Court while issuing notice of the writ petition to the

opposite/affected parties had directed that the effect & operation of the impugned Award dated 19/9/2007 shall remain stayed till further orders. Further, vide order dated 1/6/2011 Hon'ble High Court while directing the writ petition to be listed in due course, ordered the interim stay to be continued in the meanwhile.

16. It is pertinent to mention here that as per the pleadings and evidence adduced on record workmen/claimants Laljeet Yadav & Satish Kumar) were engaged as Wiremen on 23/3/1988 and 20/10/1998 respectively, while workman Ajay Kumar was engaged as Khalasi on 20/10/1998. It is manifest from the Award (Ex.WW1/3) rendered by the Presiding Officer of CGIT-II that workmen/ claimants had in fact worked under the control & supervision of the contractor/s and used to get their salaries through contractor under whom they worked. The workmen acted according to the contractor and not according to the Management. Although the Presiding Officer of CGIT-II vide Award Ex.WW1/3 has held the claimants/workmen to be entitled to be treated as daily wager of the Management after 21/7/2002 because the Management had continued them after 21/7/2002 even after prohibition of contract labour, but this Tribunal can not lost sight of the fact that the said Award has not attained finality, since the said Award is impugned before Hon'ble High court in writ petition and effect & operation of the said Award has been stayed till further orders, by the Hon'ble High Court. Thus, it would be improper to conclude that the workmen/claimants ipso-facto became the employees of the principal employer i.e. CPWD in view of the Award (Ex.WW1/3) passed on 19/9/2007.

17. There is no dispute about preposition of law that initial onus to prove relationship of employee and employer is always on the workmen/claimants but the said relationship has been virtually admitted by the Management in its reply as well as evidence adduced on record in the instant case. It is appropriate to mention here that the Management has come with a specific plea that the workmen in the present case are directly not the employee of the Management/CPWD but that of the contractor/s to whom contracts were awarded from time to time since the time of engagement of the workmen. It is appropriate to refer to the statement of MW1 M.P.Sharma – sole witness examined by the Management – who has admitted in his cross examination that workmen concerned were continuously employed even though contractor/s kept on changing from time to time. He has also admitted that no notice of termination was given to the workmen, as the workmen were the employee of the Contractor at the relevant time. At this stage it is worthwhile to emphasise that every contractor who is awarded contract for performing certain work/job, is required to assist & answerable to the Principal Employer and in such a way, the Principal Employer exercises direct control in certain regards over the contractor/s and indirect control over the workmen so engaged by the said contractor, as is clear from the Scheme of the Act. Thus, there existed relationship of employee and employers between the workmen and Management.

18. It is apparent from the record that before ordering termination of workmen herein, no notice in terms of Section 25-F of the Act was given tby the contractors and/or Principal Employer. This fact is duly admitted by MW1 Shri M.P.Sharma, witness of the Management in his cross examination. Even the workmen have not been paid one month's salary in lieu of such notice as required under Section 25-F of the Act.

19. The workmen while appearing as WW1 to WW3 have categorically deposed that even the Management did not pay one month's notice or notice pay and compensation to them and that they are still unemployed from the date when their services were terminated w.e.f.14/10/2009. The Management has not adduced any evidence to show that the claimant is gainfully employed somewhere else or that the workmen are in a position to make their both ends meet by doing any work. Even if it is assumed that the workmen are doing some intermittent or adhoc work to make their both ends meet, that would not itself amount to gainful employment. In the circumstances, it is held that action of the Management in terminating the service of the workmen is totally illegal and wrong and is in violation of Section 25-F of the Act.

20. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render whole action of the Management to be illegal and wrong under the law.

21. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore,

once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

22. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

23. A Bench of 3 Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be totally, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

24. Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.*** *A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calander year."*

25. Having regard to the legal position as discussed above and the fact that the workmen having been engaged as far back as sometimes in the year 1988 (as Wiremen & Khalasi) to perform the job of regular and perennial nature, this Tribunal is of the firm view that the workmen herein are entitled for reinstatement into service with 50 per cent back wages inasmuch as termination of the claimants/workmen is per-se illegal and the claimants/workmen are not gainfully employed anywhere since after their termination. Award is passed accordingly.

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1283.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, कार्यकारी अभियंता (विद्युत), सीपीडब्ल्यूडी, सफदरजंग अस्पताल, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 228/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.08.2018 को प्राप्त हुआ था।

[सं. एल-42011/73/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st August, 2018

S.O. 1283.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 228/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Executive

Engineer (Electrical), CPWD, Safadarjung Hospital, New Delhi & Others and their workmen, which was received by the Central Government on 16.08.2018.

[No. L-42011/73/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 228/2015

The General Secretary,
CPWD Mazdoor Union
C/o Room No.95, Barracks No.1/10,
Jam Nagar House, Shahjahan Road,
New Delhi – 110 001 …Workmen

Vs.

1 The Executive Engineer (Electrical)
CPWD, Safdarjung Hospital,
New Delhi - 110 029

2. The Medical Superintendent,
Safdarjung Hospital,
Ring Road,
New Delhi- 110 029 …Managements

AWARD

A reference was received from the appropriate Government vide letter No.L-42011/73/2012-IR(DU) dated 27.10.2015 under clause (d) of the sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) from the Central Government for adjudication of an industrial dispute, terms of which are detailed as under:

> 'Whether the termination of 29 workmen (list enclosed) by the management of CPWD with effect from 16.03.2010 is just, fair and legal? If not, what relief the workmen concerned are entitled to?'

2. Claim statement has been filed by the workmen with the averments that they had been working for the management of CPWD under the supervision of Executive Engineer (Electrical), CPWD, Electrical Division, Safdarjung Hospital, New Delhi. Details of the workmen are as under:

Sl. No.	Name of workman	Father's name	Date of joining
1.	Md. Earul Hque	Late Md. Woarash SK	02.01.1994
2.	Sunder Singh	Sh.Gyan Chand	12.04.1994
3.	Ved Prakash	Sh.Sita Ram	09.04.1994
4.	Surender Singh	Sh.Arjun Singh	25.05.1995
5.	Dhirender Singh Negi	Sh.Satye Singh Negi	12.04.1994
6.	Vijay Kumar	Sh.Jay Prakash	21.02.2002
7.	Sunil Kate	Sh.Ram Chander Kate	07.02.2003
8.	Laxman	Sh.Mahinder Singh	14.02.2007
9.	Kundan Paswan	Sh.Mohan Paswan	14.07.2003
10.	Chander Shekhar Paswan	Sh.Mohan Paswan	24.03.2007
11.	Akash Gupta	Late Sh.Arun Kumar Gupta	27.09.2002
12.	Ashok Kumar	Lt Sh. Ram Ashish Prasad	27.09.1990

13.	Saurabh Singh	Sh.Kundan Singh	10.10.2006
14.	Anup Kumar	Sh.Ram Nath	20.02.2003
15.	Laxman Singh	Sh.Virender Singh	01.11.1999
16.	Jitender Singh	Sh.Mahipal Singh	09.03.2003
17.	Raj Kumar	Sh.Surajbhan	20.11.1997
18.	Manoj Kumar	Sh.Jag Shram Johri	08.09.1995
19.	Sajan Joseph	Sh.P.J.Joseph	13.05.2004
20.	Brij Kishore Majhi	Sh.Babu Lal Majhi	05.03.1997
21.	Shyam Bahadur	Sh. Badri Prasad	06.10.2003
22.	Ramjeet	Lt.Sh.Devi Choudhary	20.04.2000
23.	Dharmender	Sh.Ammi Lal	05.05.1999

3. The services of the above workmen were terminated with effect from 16.03.2010 without following the procedure as envisaged under Section 25-F, G, H and Section 33 of the Act. .

4. It is the case of the workmen that they were engaged by the management for operating the lift as Lift Operators and all of them have been performing the duty of Lift Operators in Safdarjung Hospital under the management.

5. It is further alleged that management unlawfully employed these workmen through some fake contractors i.e. M/s Swastik Enterprises and now the work has been handed over to M/s Olympian Elevators & Engg. Co. Ltd. Initially, the workmen were employed through M/s Skylark (India) and thereafter M/s Bharat Elevators but the workmen have been performing their duties in the same manner under the supervision of Executive Engineer, Assistant Engineer and Junior Engineer of the said Division. There are averments that office of Regional Labour Commissioner vide its letter dated 23.3.2009 addressed to Sh. Surinder Singh, admitted that contractor did not obtain any licence for operating lift in Safdarjung Hospital and the management of CPWD did not procure registration to operate the lift. 64 workmen through National Trade Union Congress has raised a dispute for regularization of their service with CPWD and during pendency of the dispute, the services of the claimants were done away with without obtaining prior permission/approval from the Conciliation Officer. Hence termination of the claimants on 16.03.2010 is non-est. Termination of the workmen is also violative of Section 29 of the Act. Management has retained juniors to the claimants herein. The claimants have completed more than 240 days in a calendar year but their services have been terminated without giving one month notice on pay in lieu thereof.

6. The officers of CPWD alongwith the contractor are acting in collusion with each other to gain monetary benefits by adopting unfair practices. The officers of CPWD in collusion with contractor are not paying wages to the workmen under the Minimum Wages Act, fixed for skilled workmen. The management of CPWD has total control over the workmen and the contractor is alleged to be sham. Workmen are performing their duties as regularly employed employees but the workmen have been denied equal wages and minimum wages which their counterparts are getting. There is also reference to the judgment of Steel Authority of India Ltd. & Ors vs. National Union Waterfront Workers & Ors (2001) 7 SCC 1. Since the management have not obtained the registration certificate under section 7 of C.L.Act nor the contractor has obtained licence under section 12 of the said Act, so the above contract was only sham, camouflage and illegal.

7. It is alleged that daily rated workers in the category of Generator Operator have been getting their wages in time scale therefore, workmen herein are also entitled to the same wages which are being denied to them, from the date of their initial employment. Several hundreds of workers were appointed against direct recruitment quota in the trades in which the claimants are engaged through the said sham contract and were regularized by the management ignoring the claimants herein just to perpetuate the vested interests of the concerned officials of the in collusion with the dummy contractor and agent of the management. The jobs being performed by the claimants is regular and perennial in nature. Some of the regular lift operators who have been getting regular pay scales with allowances and other facilities are S/Shri Birender Singh Dhyani, Mariyappan, Harish Chand, Krishan Gopal, Jaggi, Ranjet, Ram Kalesh and Tej Pal. One Shri Prem Singh Rawat was on daily wages with the management at Safdarjung Hospital was granted permanent status and transferred to Lady Harding Hospital. It is alleged in para 15 of the statement of claim that daily rated workers in the category of Generator Operator have been getting their wages in time scale plus DA, ADA, HRA, CCA etc. therefore, workmen herein are also entitled to the same wages which are being denied to them, from the date of their initial employment. Reference has been made by the claimant union to the judgements of Steel Authority of India Vs. National Union Waterfront Workers (2001) 7 SCC 1, Secretary, Haryana State Electricity Board Vs Suresh (199) 1 LLJ

1086),Hussain Bhai vs Alath Factory, M/s Indian Framers Fertilizers Co-op Ltd. vs Industrial Tribunal –I, Allahabad (2002 Lab.IC 1091). Finally, it has been prayed that the workmen may be reinstated in service with full back wages with al consequential benefits.

8. The claim was contested by the management who filed written statement and took certain preliminary objections inter alia of there being no relationship of employer and employee between the claimant and the management, management not being an 'industry' as defined under the Act, maintainability and locus standi etc. On merits, it is specifically denied that workmen have been working for the management of CPWD under the supervision of Executive Engineer etc. It has also been denied that workmen were engaged as Lift Operators by the management. It is alleged that the claimants have been working for M/s Swastik Enterprises and M/s Olympian Elevator& Engg. Co. Pvt. Ltd. It is denied that the contractor did not obtain any licence for operating lift in Safdarjung Hospital and management also did not procure registration certificate under the C.L.R.A Act. Management has denied the other material averments contained in the statement of claim. With this background, a prayer is made for rejection of the claim.

9. On the basis of pleadings of the parties, this Tribunal vide order dated 07.09.2016, framed the following issues.

(i) Whether the reference is not legally maintainable in veiwo of the various preliminary objections?

(ii) In terms of reference

10. The claimants, in support of their case, examined Shri Mohd. Earul Hoque as WW1, whose affidavit is Ex.WW1/A and he also relied on documents Ex.WW1/1 to Ex.WW1/6. Averments made in the affidavit are on the similar lines as made in the statement of claim. Management, in order to rebut the case of claimants, examined Shri Ranjan Paul as MW1 whose affidavit is Ex.MW1/A and he relied on documents Ex.MW1/1 to Ex.MW1/4.

11. I have heard Shri B.K. Prasad, A/R for the claimant and Ms.Avtar Kaur Dhingra & Shri Chaman Sharma, A/Rs for the management.

Findings on Issue Nos.(i) and (ii)

12. Both these issues are being taken up together for the purpose of discussion as the same are inter related and can be easily disposed of. Before I proceed to consider the comparative merits of the submissions, raised on behalf of either of the parties, it is necessary to refer to the ratio of judgement by a Constitution Bench of Hon'ble Supreme Court in Steel Authority of India and others Vs. National Union Waterfront Workers and others (2001) 7 SCC 1) wherein Supreme Court was primarily concerned with the meaning of the expression 'appropriate Government' as used in Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970 and in Section 2(a) of the Industrial Disputes Act, 1947 in relation to State Government or the Central government. The other issue involved before the Apex Court was the automatic absorption of contract labour in the establishment of the principal employer as a consequence of abolition notification issued under Section 10-A of the CLRA Act 1970. Supreme Court while partly overruling the judgement in Air India Statutory Corporation vs. United Labour Union (1997 (9) SCC 377) prospectively held that neither section 10 of the CLRA Act nor any other provisions of the Act, whether expressly or by necessary implication, provides for automatic absorption of the contract labour on issuance of notification under the said section, prohibiting contract labour and consequently principal employer is not required to absorb contract labour working in such establishments. In the said case, another incidental issue whether relationship of master and servant between the principal employer and contract labour emerges after issuance of notification under section 10 of the CLRA Act was also considered by the Court. After discussing the entire spectrum of the case law on the subject in Para 125 of the judgement, it was held as under:

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment;

"(4) We overrule the judgment of this Court in Air India case prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case shall hold good and that the same shall not be set aside, altered of modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final."

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is

a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

13. A critical examination judgement in SAIL case (supra) would show that this judgement shines like a pole star in the galaxy of precedents in the field of industrial laws and provides a beacon light to all those who are lost in the mist of legal confusion. It is further clear from the above judgements that purpose of issuance of notification appears to be clear and Parliament has intended to create a bar by incorporating provision on engagement of contract labour in any establishment covered by such prohibition notification. Thus, no option is left with the employer to employ contract labour in the category of jobs mentioned in the said notification. In fact, Section 10 is enacted to work as a permanent solution to the problem and there is no legal justification for engagement of contract labour after issuance of such notification issued under Section 10 of the CLRA Act and incase of violation, employer can be imposed with punishment under Section 21 to 23 of the CLRA Act.

14. Supreme Court in International Airport Authority of India vs. International Air Cargo Workers Union (2009 (13) SCC 37) again considered the question of contract labour as well as impact of issuance of notification under Section 10 of the CLRA Act, and held as under:

'20. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.

15. It is clear from pleadings as well as evidence on record that the workmen herein were engaged by the management of CPWD in the year 1994 and onwards. It is further clear from matrix of the case that the workmen herein were admittedly doing work for the benefit of CPWD and it was not an independent or individual work of the so called contractor in whose employment they have been shown in the evidence adduced by the management .

16. In the case in hand, management has not taken care to implead or examine the so called contractor, in whose employment the claimants herein have been shown to be working . To my mind, he was the best witness to depose about

the nature of work which was being performed by the claimants herein and his evidence as to under whose supervision claimants herein were working would have been very relevant and vital. I am not in agreement with contention of the learned A/R for the management that the workmen should have called the contractors as witness or impleaded him as a party so as to unfold the truth. Since the contractor is admittedly an agent of the principal employer and there is privity of contract between the management of CPWD and the contractor, in such a situation, management having all the relevant documents in its possession so as to show that what work was allotted, what was the nature of work which was to be got done by the workmen through the so called contractor and amount of payable to such workmen.

17. Claimants, in order to substantiate the allegations made in the claim, has examined Shri Mohd. Earul Hoque as WW1 whose affidavit is Ex.WW1/A. He has also tendered in evidence documents Ex.WW1/1 to Ex.WW1/5.. There is also document addressed to the Executive Engineer by Deputy Director (Admn.) regarding implementation of judgement of the judgement dated 17.01.1986 in the case of Surender Singh Vs. Engineer in Chief.

18. Management, though examined Shri Ranjan Paul as MW1, yet his statement is not of much value so as to refute the case of the claimants. He has admitted that contract employees are not being paid wages equal to the regular time-scale of lift operators. It is really strange that despite issuance of notification, Department is still resorting to the practice of engaging labour or daily rated workmen through so called contractors. In fact, workmen are not aware of the name and antecedents of such contractors, who normally do not come to the site and work is being done under the supervision of the officials, Junior Engineer, Assistant Engineer of the management. The witness MW1 Shri Ranjan Paul was not aware whether the contractor is duly registered with the labour authority under the CLRA Act.

19. During the course of arguments, much stress was laid by the A/R for the claimant on the judgement in Surender Singh case, which has been mentioned in the various correspondence of the management also. This judgement purely details equal pay for equal work and method of calculation of daily wage to daily rated workers. Department has also issued directions from time to time for implementation of the said judgement.

20. Now the vital question which requires determination is whether the so called contracts entered into between the management and the contractors, which have neither been exhibited nor proved on record, as per requirement of law are sham and bogus.

21. During the course of arguments, the learned A/Rs for the respective parties relied upon the ration of judgment in SAIL case (supra). In the said case as discussed above, the Hon'ble Apex Court has cast a duty upon the Industrial Adjudicator to examine in the light of facts and circumstances of each case whether so called contract entered into between the management and the contractor is sham or nominal it is just a device to defeat the provisions of the law so as to ensure that the workmen do not claim to be employees of the management. It is apt to mention here that CLRA Act was enacted by the Parliament to deal with the abuse of contract labour system and the Act was framed by the Parliament to curb abuse of contract labour by contractor. Primary object of the Act was to regulate employment under the contract labour system in certain categories of employment. This approach is clearly discernable from the overall provisions of the Act. Further this Tribunal has to keep in mind noble object of these social beneficial legislation which needs to be construed in favour of the workmen.

22. During the course of arguments, it was strongly argued on behalf of the management that he Hon'ble Court of Dr. R.K. Yadav, Presiding Officer, Karkardooma Courts has already discarded the earlier petition filed by the workman in ID No.12/2011 dated 08.05.2013. However, bare perusal of the award dated 08.05.2013 in ID No.12/2011 reveals that the dispute was raised by the claimants under sub-section (2) of Section 2A of the Act and the claim that the contract entered into between the management and the contractor was sham and bogus does not fall within the ambit of Section 2A of the Act. For such a dispute, espousal by the union or considerable number of workmen in the establishment of the management is required and thereafter the appropriate Government is supposed to form an opinion about existence of the dispute and refer it for adjudication under sub-section (1) of section 10 of the Act. Hence, the claim was discarded for the simple reason that the claimants cannot raise such a dispute of their own without it being referred for adjudication by the appropriate Government.

23. This Tribunal cannot ignore the vital fact that Section 46 of the Factories Act, 1948, requires establishment of a canteen in a factory employing more than 250 workers. State Government have been given powers under the Act to make rules requiring such canteens to be provided in the factories so as to ensure welfare of the workmen working therein. Factories Act is otherwise a social legislation and it provides for the health, safety, welfare, working hours and leave and other benefits for workers employed in factories. Even Section 16 of the CLRA Act specifically provides that the appropriate Government may make rules requiring every establishment setting up one or more canteens for the use of contract labour. There is even provision for rest rooms as well as other facilities to be provided to ensure that all these above requirements as well as amenities which are required to be provided under the above Acts for the benefit of contract labour in the establishment is fully complied with. Therefore, it was against this background that Apex court held that labour working in the factor was the employee of the Company, i.e. principal employer for the purpose of Factories Act and not for the purpose of Industrial Disputes Act.

24. It is not the case of the management that administrative or supervisory control over the workmen was being exercised because of statutory requirements as was the position in Haldia Refinery Canteen Employees Union case(supra) and Ram Singh case (supra). Management has not whispered a word that contractor was giving directions to the workman to do a particular kind of duty on the spot so as to show that supervisory and effective control was with the contractor. Rather, it has been admitted by MW1 that they were giving directions to the workers who were doing work on the spot. In the case in hand, there other peculiar factors which were not present in the authorities relied upon by the management. There was no issuance of prohibition notification under Section 10 of the Act in most of the cases relied upon by the management, whereas in the case on hand, vide Ex.WW2/1 prohibition notification was admittedly issued. Workmen as per list Ex.WW1/M1 are mostly skilled and semi-skilled workmen who are admittedly performing their duties at the respective sites as per directions of the Assistant Engineer, Junior Engineer, etc. Tribunal cannot ignore the fact that duties of khalasi, beldaars, wiremen, lift operators, AC operator etc. is of such nature that the same can be performed only under the directions and direct supervision of superior officers and there cannot be any role of contractor in the performance of such duties. Management has admittedly flouted the notification Ex.WW2/1 and it was followed more in breach than in observance. Management has neither proved any contract nor examined any contractor so as to prove that supervisory or administrative control was that of the contractor whereas in the cases relied upon by the managements contracts were proved on record so as to determine nature of work, control and duration of such contracts. It was also proved in some of the cases that the contractor was marking attendance of the workmen, issuing wage slips etc. Thus, in said cases, control over the workmen was that of the contractor whereas in the case on hand, all such material facts are missing as the same have not been pleaded or proved on record by the management. Moreover, in the case in hand, management has not examined any contractor nor proved/exhibited any contract awarded to the said contractors so s to ascertain terms and conditions of the contract and nature of control which the principal employer or contractor was to exercise upon the workmen employed at the spot. In such circumstances, this Tribunal is bound to drawn adverse inference against the management.

25. In the case of BHEL s. State of Uttar Pradesh (2003 Lab.IC 230) Hon'ble Apex Court dealt with the question of contract employee. It was a case where workmen were engaged as gardeners(mali and sweepers) to maintain lawns and parks inside the factory premises of the company. Their services were terminated ion 01.12.1988 and workmen took matter to the Labour Court, who directed the Company to reemploy them and pay compensation. Ultimately matter reached before the Supreme Court wherein plea was taken that the workmen were engaged for working as gardeners in the factory premises and campus of the Company and the Hon'ble Apex Court finally upheld decision of the Labour Court by observing as under:

> "5. The true test may, with brevity, be indicated once again. Where a worker or group of workers laborers, to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contracts is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor, Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer based on Articles 38, 39, 42,43 and 43-A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.'

26. It is not out of place to mention here that in SAIL case (supra), the Hon'ble Apex Court approved ratio of judgement in Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode & Othrs(1978(4) SCC 257). Supreme Court in the said case also considered the vital question of status of the workmen who have been employed through contractor by the principal employer. Issue in the said case was hiring of workmen through contractor by industry manufacturing ropes. Supreme Court pointed out that work done by the contract labour was integral part of the industry concerned and the workmen were broadly under the control of the management. Payment of wages was being made through the contractor as is the position in the present case. In order to ascertain the real nature of the contract, the Apex Court observed that where a worker or a group of workers labour to produce goods or services and these goods or services are for the business of another, that other is in fact the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, Courts discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor.

27. Yet in another case, Sankar Mukherjee & Others Vs. Union of India & Others (1990 (Supp.) SCC 668), The Apex Court considered the notification under Section 10(1) of the Contract Labour (Regulation & Prohibition) Act,1970. The said notification by the Government of West Bengal dealt with prohibiting the employment of contract labour in 16

departments covering 65 jobs in the establishments of M/s. Indian Iron and Steel Co. Ltd. The list of the departments and the jobs are annexed in the schedule to the notification. One of the Departments related to Brick Department excluding the job of loading and un-loading of bricks from wagons and trucks. On a challenge made by the affected workers that they had been subjected to hostile discrimination so much so that the workmen doing the same job in other departments and allied jobs in the same department have been rescued from the system of contract labour, the Supreme Court pointed out that bricks handled by the brick department were used in furnaces of the company as refractory and incidental to the industry carried on by the company. The petitioners herein were employed as contract labour by the company for the last 15 to 20 years. The Supreme Court further pointed out that even though the petitioners were not doing the job of stacking the bricks, there was no denial nor any averment or material on the record to show that the job of loading and unloading of bricks was not incidental or alike to the stacking of the bricks. On the other hand, they are one continuous process. That being so, the workers performing these jobs which are of perennial nature, are to be treated alike. The Supreme Court pointed out that the workers doing the job of loading and unloading from the wagons and trucks in the Brick Department are to be treated on par with those who are doing the job of cleaning and stacking in the said Department. The Supreme Court further pointed out that there was o reason as to why others doing the same job should be treated differently.

28. During the course of arguments, great emphasis was placed by the learned counsel for the workmen on the fact that when the nature of job done by the workmen herein is regular and perennial in nature and workers are doing same work which was being done by regular workmen, who were admittedly drawing salary double the amount of the salary of the workmen herein, in such a situation , so called contracts with the contractors in the face of prohibition notification under Section 10 cannot be termed to be legally valid. Such agreements are against public policy and any agreement against public policy is liable to be termed as a void agreement. Consequently, such a contract itself becomes void, sham, nominal and bogus in the eyes of law, such contracts are bogus and sham in law. Since majority of the workmen are doing the work of skilled or semi-skilled in nature, which is an integral part of the activity of the department, i.e. CPWD as such there was no question of engaging contract labour after issuance of notification under Section 10 of the CLRA Act.

29. Decision of the Hon'ble Apex Court in Catering Cleaners of Southern Railway vs. Union of India and another (1987 (1) SCC 700) relates to a case of contract labour engaged for cleaning catering establishments and pantry cars in Southern Railway. The Supreme Court pointed out that although the contract system has been abolished in almost all the other Railways, the Southern Railway persists in employing contract labour for cleaning its catering establishments and pantry cars to serve public better. In considering the claim of the contract labour , the Supreme Court pointed out that the work of cleaning catering establishments and pantry cars is necessary and incidental to the industry or the business of the Southern Railway; the employment is of perennial nature and that the work required employment of sufficient number of whole-time workmen. Thus, these factors satisfy the provisions under Section 10(2) of the CLRA Act. Considering such facts, instead of issuing a Mandamus, the Supreme Court directed the Central Government to take appropriate action under Section 10 of CLRA Act in the matter of prohibiting employment of contract labour in the work of cleaning catering establishments and pantry cars in Southern Railway. The Supreme Court further directed that these workmen, who were previously employed by the contractor on the same wages and conditions of work as are applicable to those engaged in similar work in Western Railway, be absorbed without waiting for the decision of the Central Government.

30. Question of contract labour was also considered by the Hon'ble Apex Court in the case of Suresh vs Haryana State Electricity Board (1999 LLJ 1086). It was also a case where question of right of equality, i.e. equal pay for equal work as well as question of contract labour was considered. In the said case also Haryana State Electricity Board awarded contract for keeping plants and service station clean and hygienic conditions to a private contractor. There was a stipulation in the contractor to employ minimum number of workmen. Workmen had put in more than 240 days in a calendar year and worked for several years. Labour Court ordered their reinstatement with continuity of services when contractor had terminated their services. Hon'ble High Court also held that there existed relationship of employer and employee between the Electricity Board and the workmen and upheld the award of the Labour Court. Hon'ble Apex Court also upheld the judgement of the High Court and observed that maintenance work in the plant is not seasonal in nature and overall control of contract labour, including administrative control rested with the Electricity Board. Neither the contractor was licenced nor Electricity Board was registered as principal employer. Therefore, so called contract system was merely a camouflage, bogus and a smoke screen. In the case in hand also as observed above, admittedly there is no evidence on record to show that the management was duly registered nor there is any evidence worth the name that the so called contractor was duly licenced under the law. Work in the case in hand is also not of seasonal nature and most of the workmen are doing this work regularly for the last several years. Same cannot be termed to be seasonal or temporary work.

31. Conspectus of the above judgements would clearly show that heavy duty has been case on the Industrial Adjudicator so as to decide whether the contract in question is genuine one or sham, camouflage or bogus. As discussed above, no such contract has been proved on record by the management, who has admittedly engaged workers after issuance of prohibition notification Ex.WW1/1 dated 08.09.1994. No doubt, CPWD, i.e. the management has its

offices throughout the country and they are engaging labour for different projects but being an important organ of the Government, it is expected from such a big organization that it should act like a model employer and cannot engage any labour which is in derogation of the prohibition notification issued under Section 10 of the CLRA Act. Simply because punishment is provided under Section 23 of the CLRA Act for contravention of the provisions regarding employment of contract labour, that would not itself mean that the Government can engage contract labour in defiance of the statutory prohibition or notification issued under Section 10 of the Act. The Act does not even exclude prosecution of the officers of the State Government or any of the Instrumentalities under the State Government for contravening provisions of the Act. However, the fact remains that no such prosecution has ever been launched against officials of CPWD for violation of Section 23 of the CLRA Act nor any other law. In view of my detailed discussion hereinabove, it is held that so called contracts between the management of CPWD and contractors are held to be sham, bogus or nominal; as such, workmen are held to be directly in the employment of the management.

32. Now, the next question which is also required to be answered by this Tribunal is whether workmen herein are entitled for equal pay for equal pay from the date of their initial appointment or regularization of their services by the management ? In this regard, learned A/R for the management invited attention of this Tribunal to office order Ex.WW1/3 which deals with equal pay for equal work and method of calculation of such daily rated workers of CPWD. Perusal of the above office order would show that the same was issued by Directorate General of Works of CPWD, New Delhi and subject of the letter is as under:

> Subject Implementation of Supreme Court judgement dated 17.01.1986 on Surender Singh's case regarding equal pay for equal work' – Method of calculation of wages of the daily rated workers regarding
>
> Reference have been received from some of the superintending Engineers/Executive Engineers etc. seeking clarification regarding method of computing daily rates payable to daily rated workers of CPWD on the concept of 'equal pay for equal work'. It has been decided that the following formula may be adopted for the purpose of working out daily rates of wages of daily rated workers of the CPWD:
>
> "The total monthly emoluments admissible to regular counterparts of the daily rated workers at the minimum of the respective scale of pay may be multiplied by number of days in a particular month after deducting there-from the days of absence plus the days of rest falling in the week/weeks in which the worker remained absent and the result may be divided by number of days in the month. The figure so arrived will be the daily rate of wages of the worker. '

33. During the course of arguments, learned A/R for the claimant relied upon the provisions of Rule 25(v)(a) of the Contract Labour (Central) Rules 1971, which provides that where workmen employed by the contractor performs same or similar kind of work as the workmen directly employed by the principal employer wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment for the same kind of work.

34. Reliance was also placed upon the case of Indian Airlines vs. Central Government Labour Court (1987 (II) LLJ 512) . It was a case where question of equal pay for equal work was considered. In fact management of Indian Airlines has engaged workers for rendering services for sanitary water supply, sewage work etc. Later on, their services were transferred to the contractor, who terminated their services. It was held that remedy to the workmen is either to file reference under Section 10 of the Act or file application under Section 33(C)(2) for equal wages which their regular counter parts are getting. It was further observed that in case of less wages being paid to the contract workmen, principal employer is bound to pay wages and recover the same from the contractor. Resultantly, it is held that workmen herein are entitled for equal pay with their regular counterparts performing similar duties on the similar posts from the date of their appointments.

35. As a sequel to afore-mentioned discussions, it is held that the so called contract between management of CPWD and its contractor, with regard to employment of the workmen whose names are mentioned in Column No.2 of Annexure A attached to the reference order, is held to be sham, and bogus. It is further held termination of the 29 workmen as per list annexed to the reference by the management of CPWD is held to be unjust, unfair and illegal. The claimants are entitled to be reinstated in service with continuity and full back wages. Workmen shown to be working through the contractor are entitled to be regularized in accordance with the Regulations/policy of the management applicable in this behalf. While regularizing services of the workmen, management is required to keep in mind their age, qualification and length of service etc. and any policy in this behalf. An award is accordingly passed. It be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : August 9, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1284.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, दिल्ली मेट्रो रेल निगम, दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 255/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.08.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st August, 2018

S.O. 1284.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 255/2017) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Delhi Metro Rail Corporation, Delhi & Others and their workmen, which was received by the Central Government on 10.08.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

D.I.D. No. 255/2017

Shri Rakesh, S/o Shri Ramesh, through
Janhit Mazdoor Union Delhi Pradesh (Regd. No.3978),
C-9, Lal Bagh, opposite Factory A-67/2,
G.T. Karnal Road,
Azadpur, Delhi – 110033 …Workman

Versus

(i) M/s Scan Guard Protection Services Pvt. Ltd.,
29/1A, D/S First Floor, Ashok Nagar,
Delhi – 110 018

(ii) Delhi Metro Rail Corporation
Delhi Metro Station Samaypur Badli,
Rohini Sector 18-19,
Delhi 110 002 …Managements

AWARD

Present dispute has been raised by Shri Rakesh (in short the workman) under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). A period of 45 days stood expired from the date of making his application before the Conciliation Officer. Sub-section (2) of section 2-A of the Act empowers him to file a dispute before this Tribunal, without being referred by the appropriate Government. His contention stands substantiated by the provisions of sub-section (2) of section 2-A of the Act. Workman has been given a right by the Act to approach this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of her service, without a dispute being referred by the appropriate Government under sub-section (1) of section 10 of the Act. Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2-A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

2. It has been averred that the workman joined M/s Scan Guard Protection Services (P) Ltd. (in short the contractor) as House Keeper and his last drawn wages was Rs.8,300.00 per month and he was made to work with Delhi Metro Rail Corporation (in short the management) Delhi Metro Station at Samaypur Badli, Rohini Sector 18-19 and performed his duties to the entire satisfaction of his superiors. The workman was deprived benefits of various beneficial legislations/mandatory legal facilities, including PF, ESI, minimum wages despite verbal requests. His earned wages for the period 01.03.2017 to 24.03.2017 has also not been paid to him. Demand notice was served on the management by speed post on 29.05.2017. It is further alleged that at the time of his engagement, the management obtained his signatures on blank paper. The workman lodged a complaint with PG portal as a result of which the management was annoyed and started harassing the workman and finally terminated him on 24.03.2018 without any notice/notice pay or without any

domestic enquiry, in an illegal manner, which is against the provisions of Section 25-F of the Act. The workman is unemployed since his termination. Finally, it has been prayed that he may be granted reinstatement with back wages and all consequential benefits.

3. Written statement was filed on behalf of the management wherein relationship of employer and employee has been denied between them and the workman as he was an employee of the contractor. The management entered into service agreement with the contractor for providing services to carry out contractual responsibilities in terms of the said service agreement. The workman was working under the direct control and supervision of the contractor. The present dispute has been raised against two different managements who are two different legal entities and it is not specified as to against whom he is seeking relief; hence bad and incompetent under the law. The management has denied the other material averments contained in the statement of claim.

4. Written statement has also been filed by the contractor wherein it is averred that the workman was working with them for contractual work of mechanized cleaning and housekeeping at Badli/Rohini Sector 18 stations of the management. The workman stopped reporting for work from 24.03.2017 and finally on 10.04.2017, he submitted his resignation, which was duly accepted by the company. In response to the PGMS complaint by the workman, a letter dated 30.05.2017 was sent to the workman through registered post advising him to join duties but he never reported for duties. The workman was paid minimum wages and he was also given benefit of PF and ESI as well.

5. Thereafter, the case was listed for filing of rejoinder and framing of issues. However, despite granting of two opportunities, none appeared on behalf of the workman. Thus, it is clear that the workman is no more interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. However, it will not debar the workman, Shri Rakesh, from seeking relief afresh as there is no adjudication of the reference on merits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : August 6, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1285.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, दिल्ली मेट्रो रेल निगम, दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 254/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.08.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st August, 2018

S.O. 1285.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 254/2017) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Delhi Metro Rail Corporation, Delhi & Others and their workmen, which was received by the Central Government on 10.08.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

D.I.D. No. 254/2017

Shri Balraj Varma, S/o Shri Naresh Varma, through
Janhit Mazdoor Union Delhi Pradesh (Regd. No.3978),
C-9, Lal Bagh, opposite Factory A-67/2,
G.T. Karnal Road,
Azadpur, Delhi – 110033 …Workman

Versus

(i) M/s Scan Guard Protection Services Pvt. Ltd.,
29/1A, D/S First Floor, Ashok Nagar,
Delhi – 110 018

(ii) Delhi Metro Rail Corporation
Delhi Metro Station Samaypur Badli,
Rohini Sector 18-19,
Delhi 110 002 …Managements

AWARD

Present dispute has been raised by Shri Balraj Varma (in short the workman) under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). A period of 45 days stood expired from the date of making his application before the Conciliation Officer. Sub-section (2) of section 2-A of the Act empowers him to file a dispute before this Tribunal, without being referred by the appropriate Government. His contention stands substantiated by the provisions of sub-section (2) of section 2-A of the Act. Workman has been given a right by the Act to approach this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of her service, without a dispute being referred by the appropriate Government under sub-section (1) of section 10 of the Act. Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2-A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

2. It has been averred that the workman joined M/s Scan Guard Protection Services (P) Ltd. (in short the contractor) as House Keeper and his last drawn wages was Rs.6,500.00 per month and he was made to work with Delhi Metro Rail Corporation (in short the management) Delhi Metro Station at Samaypur Badli, Rohini Sector 18-19 and performed his duties to the entire satisfaction of his superiors. The workman was deprived benefits of various beneficial legislations/mandatory legal facilities, including PF, ESI, minimum wages despite verbal requests. His earned wages for the period 01.03.2017 to 17.03.2017 has also not been paid to him. Demand notice was served on the management by speed post on 29.05.2017. It is further alleged that at the time of his engagement, the management obtained his signatures on blank paper. The workman lodged a complaint with PG portal as a result of which the management was annoyed and started harassing the workman and finally terminated him on 17.03.2018 without any notice/notice pay or without any domestic enquiry, in an illegal manner, which is against the provisions of Section 25-F of the Act. The workman is unemployed since his termination. Finally, it has been prayed that he may be granted reinstatement with back wages and all consequential benefits.

3. Written statement was filed on behalf of the management wherein relationship of employer and employee has been denied between them and the workman as he was an employee of the contractor. The management entered into service agreement with the contractor for providing services to carry out contractual responsibilities in terms of the said service agreement. The workman was working under the direct control and supervision of the contractor. The present dispute has been raised against two different managements who are two different legal entities and it is not specified as to against whom he is seeking relief; hence bad and incompetent under the law. The management has denied the other material averments contained in the statement of claim.

4. Written statement has also been filed by the contractor wherein it is averred that the workman was working with them for contractual work of mechanized cleaning and housekeeping at Badli/Rohini Sector 18 stations of the management since 01.06.2016. The workman stopped reporting for work from 19.02.2017. In response to the PGMS complaint by the workman, a letter dated 06.05.2017 was sent to the workman through registered post stating that he had deserted his job from 19.02.2017 and demanded an explanation from him. Again vide letter dated 09.05.2017 and 12.05.2017, the workman was advised to join duties as he had expressed his desire for reinstatement, but he never reported for duties. The workman was paid minimum wages and he was also given benefit of PF and ESI as well.

5. Thereafter, the case was listed for filing of rejoinder and framing of issues. However, despite granting of two opportunities, none appeared on behalf of the workman. Thus, it is clear that the workman is no more interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. However, it will not debar the workman, Shri Balraj Varma, from seeking relief afresh as there is no adjudication of the case on merits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : August 6, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1286.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, रजिस्ट्रार, बीरबल साहनी पुरावनस्पति विज्ञान संस्थान, लखनऊ एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 02/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.08.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st August, 2018

S.O. 1286.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 02/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the employers in relation to the Registrar, Birbal Sahani Puravanspati Vigyan Sansthan, Lucknow and their workmen, which was received by the Central Government on 21.08.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

RAKESH KUMAR, Presiding Officer

I.D. No. 02/2014

BETWEEN :

Smt. Har Kirtan Kaur
R/o 551/K/188 Bhilwan
Alambagh,Lucknow

AND

1. The Registrar,
Birbal Sahani Puravanspati Vigyan Sansthan,
53, Vishvavidyalaya Marg,
Lucknow (UP) 226007

AWARD

1 The workman has filed the petition under Section 2A of the I.D. Act. which is allegedly an industrial dispute between Smt. Har Kirtan Kaur and the Registrar, Birbal Sahani Puravanspati Vigyan Sansthan, Lucknow for adjudication.

2 The applicant in her petition W-1 dated 30.01.2014 moved under section 2A of the I.D. Act. has submitted in brief that as per the order dated 21.10.1997 passed by the Registrar, she was appointed on the post of Telephone Operator-cum-Receptionist, the work assigned to him was of regular nature. The petitioner has submitted that up to 17.01.2006, she has worked for more than 240 days in every calander year, she was dis-engaged w.e.f. 18.01.2006 without any notice, charge sheet, retrenchment compensation etc, in violation of the Section 25F of the I.D. Act.

3. It has further been alleged that sufficient work was available in the Opposite Party Institute and Sarva Sri Anupam Jain, Mahesh Nair, Manoj Singh and Rahul Gupta were appointed from the open market and they were regularized in the year 2013 which is against the violation of Section 25 of the I.D. Act. No opportunity of hearing was provided to the applicant workman, neither she was asked to put her defence, the aforesaid action of the management is against the principle of natural justice. Although the opposite party on the oral and written request made by the applicant workman, has assured, yet she has not been reinstated till the date of filing the petition. The workman has asserted that there has not been any break in her service, her salary is due, and the petition is moved without delay, and since her retrenchment/dis-engagement, she has not got any job despite her best efforts, she is unemployed yet. Before RLC (C) conciliation proceedings did not succeed, therefore the petitioner workman has moved before this Court. With the aforesaid pleadings, request has been made by the petitioner workman to

declare the dis-engagement as illegal and to get her reinstated with salary and other consequential benefits etc. Documents relating to the proceeding before the RLC (C) Lucknow have been annexed with the petition. Separate application for condonation of delay has also been enclosed.

4. The management while making request to dismiss the petition has filed objection M-6 dated 20.08.2014, denying the allegations made in the claim petition. The opposite party has asserted that application is false, baseless and misconceived. The management has admitted that petitioner was appointed but the appointment was purely on contractual basis, and she had no right to be continued on the post of Telephone Operator-cum- Receptionist after expiry of the term of the contract on 17.01.2006, because it was not renewed thereafter.

5. The opposite party has further asserted that during the pendency of the application for conciliation before the Labour Court (RLC (C) Lucknow), Writ Petition no. 2765 (S/S) 2006 was filed before the Hon'ble High Court for regularization but it was dismissed by the Hon'ble High Court on 05.05.2006, as being not pressed. There has not been any violation of the provision of the I.D. Act., and the applicant was never retrenched from her service because her services could not be continued due to non renewal of the contract, and it is not in contravention of the principle of natural justice. The opposite party has stressed that after approaching the Labour Authorities and Hon'ble High Court, the petitioner has again after a gap of 8 years moved the present petition for the same cause of action, which is not maintainable at all. With the aforesaid averments, the opposite party has requested to dismiss the petition.

6. With strong denial of the counter allegation leveled in the objection filed by the management, rejoinder W-8 dated 08.01.2015 has been filed by the petitioner workman, reiterating the pleas taken in the claim statement.

7. With the application M-7 praying for dismissal of the petition, written statement M-8 on behalf of the opposite party, has been filed by Dr. R.S. Singh posted as Additional Duties of Registrar, alongwith the annexures, re-asserting the facts mentioned in objection M-6 filed earlier.

8. Again reply W-8 dated 03.06.2016 has been filed on behalf of the workman, admitting therein the order passed by Hon'ble High Court.

9. The workman has filed the photo copy of the alleged Attendance Register and letter dated 13.11.2008 alongwith an application W-9, copies were provided to the management.

10. In support of the claim statement, the petitioner has filed her affidavit W-11 dated 07.02.2017, providing copy to the management on 01.05.2017.

11. On 07.10.2015 both the parties were heard on application M-6 (Preliminary objection raised by the management) and reply W-8. Vide order dated 23.10.2015, application M-5 and M-6 were dismissed and it was directed by this Court to avoid undue delay and opportunity was provided to the management to file comprehensive written statement on the next date. Later on Written statement M-8 was filed. It is evident from the record that Learned AR of the opposite party or any other official of the Institute, has not appeared in the Court on so many dates. On 06.12.2016 in the presence of both the parties date was fixed for workman's evidence. Workman has filed her affidavit in evidence. On 20.03.2017 and 01.05.2017 none appeared on behalf of the opposite party, and the Court closed the opportunity of the opposite party to cross examine the workman-witness. However, later on the application M-12 moved by the management to recall this order, was allowed and another date was fixed. Meanwhile the application W-10 moved by the workman for summoning certain documents, was taken up and opposite party on its request was asked to submit objections if any. But again neither any objection was filed nor any adjournment was sought by the management and application W-10 was disposed of on 18.08.2017, requiring management thereby to file the documents by next date. Again on 06.02.2018 both the parties appeared but the management did not file any document, consequently opportunity was closed and opposite paty was requested to cross examine the workman witness on next date i.e. 14.03.2018. Thereafter several dates were fixed but the opposite party has refrained itself to ensure its presence in the court so as to facilitate the disposal of the case.

12. The workman was not cross examined by the management, neither the management witness was produced before the Court for his cross examination by the workman, despite the fact that sufficient opportunity was provided to the management. On the date fixed for argument, again none appeared on behalf of the management.

13. Arguments of Learned AR of the petitioner have been heard at length. Record has been scanned thoroughly.

14. The petitioner has alleged that she was appointed vide order dated 21.10.1997 passed by the Registrar of the opposite party Institute, on the post of Telephone Operator-cum- Receptionist and has worked till 17.01.2006 satisfactorily. It has further been emphasized that in every calander year she had worked for more than 240 days but the management unauthorizedly and illegally dis-engaged the petitioner w.e.f. 18.01.2006 without notice, charge sheet, retrenchment compensation etc.

15. The petitioner has filed photo copy of the attendance sheet as well as letter dated 13.11.2008 signed by the Registrar mentioning therein that Mrs. Sonia Khanna has been engaged on consolidated wages of Rs.5000/- per

month on contract basis for 2 months w.e.f. 13.10.2008 upto 12.12.2008. The petitioner on her affidavit W-11, was not cross examined by the management. The evidence/affidavit filed by opposite party has also lost its legal sanctity since the management witness could not be confronted for cross-examination by the workman.

16. Learned AR for the workman has relied upon the following citations;

1. AIR 1978 Supreme Court, 548 -1978 LAB. I.C. 467 Bangalore Water Supply and Sewerage Board. Vs A. Rajappa and others.
2. 2001, (88), FLR, 508, Supreme Court, Deep Chandra vs State of U.P. and another.
3. 2008 (119) FLR 937), Allahabad High Court, State of U.P. and Presiding Officer, Labour Court, Agra and another.
4. 2004 (100) FLR (109), Allahabad High Court, State of U.P. and another and Presiding Officer, Labour Court, Agra and another.

17. In view of the law laid down by Hon'ble Apex Court in (2006) 3 SCC 276 State of U.P. vs Sheo Shanker Lal Srivastava & others; the statement of the witness, having not been controverted would be deemed to be admitted, there is no reason to disbelieve the statement of the workman.

18. After having heard the intellect arguments advanced on behalf of the workman, analysing the facts and evidence available before the Court, in the light of the prouncements of Hon'ble Supreme Court and Hon'ble High Court, it is inferred that the said dis-engagement/retrenchment dated 18.01.2006 can not be adjudged as legal or justified. The petitioner workman is entitled for her reinstatement accordingly as per Rules. The opposite party is directed to ensure payment of 50% of the back wages with consequential benefits to the petitioner workman, within 10 weeks from the date of notification of the award.

19. Award as above.

LUCKNOW
12.07.2018

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1287.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, इंस्पेक्टर, आरएमएस एसटी डिविजन, बीकानेर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या सीआईटी 01/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.06.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st August, 2018

S.O. 1287.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CIT 01/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the Inspector, R.M.S. S.T. Division, Bikaner & Others and their workmen, which was received by the Central Government on 12.06.2017.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

अनुबंध

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सी.आई.एस. नं. 51/2014,

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सोहनलाल पुत्र श्री मेवाराम मार्फत श्री संतोष भटनागर, 18, अर्जुनपुरी,
इमली वाला फाटक, सिद्धार्थ मोटर्स के पास, जयपुर—5.

.... **प्रार्थी**

बनाम

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.... **अप्रार्थीगण**

उपस्थित :

प्रार्थी की ओर से : विद्वान प्रतिनिधि श्री बी.एम.बागडा ।

अप्रार्थी की ओर से : विद्वान प्रतिनिधि श्री तेज प्रकाश शर्मा।

दिनांक 01.05.2017

अवार्ड

केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली ने उपरोक्त आदेश के जरिये निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण को दिनांक 25.2.2000 को प्राप्त हुआ है कि— "Whether the action of the Inspector, R.M.S., S.T.Division, Bikaner is justified in terminating the services of Shri Sohan Lal a subsitute of extra Departmental Employes w.e.f.12/1194 ? If not, to what relief the workman is entitled ?

प्रकरण दर्ज रजिस्टर किया जाकर उभय पक्षकारान को नोटिस जारी किए गए। प्रार्थी की ओर से दिनांक 03.06.1999 को स्टेटमेन्ट ऑफ क्लेम पेश कर अभिकथन किया गया कि प्रार्थी की नियुक्ति अप्रार्थी संख्या—1 के कार्यालय में दिनांक 15.02.1990 को एक्स्ट्रा डिपार्टमेंटल केन्डीडेट के रुप में दैनिक वेतन भोगी कर्मचारी के रुप में की गयी थी।प्रार्थी लगन और ईमानदारी से अप्रार्थीगण के यहां कार्यरत था तथा प्रार्थी का कार्य संतोषप्रद था फिर भी प्रार्थी को दिनांक 12.11.1994 को बिना किसी कारण बताये ही श्री खेताराम इन्स्पेक्टर ने मौखिक आदेश के द्वारा सेवामुक्त कर दिया,इस पर प्रार्थी ने अप्रार्थी सं.2 से दिनांक 22.3.1995 को उसके कार्यालय में जाकर सम्पर्क किया परन्तु कोई संतोषजनक उत्तर नहीं दिया यही नहीं अप्रार्थी सं.2 ने दिनांक 30.03.1995 को स्थायी भर्ती के लिए प्रार्थनापत्र मांगे परन्तु अप्रार्थी सं.2 ने प्रार्थी को कोई सूचना नहीं दी तथा विपक्षी सं.1 व 2 ने प्रार्थी को स्थायी पदों पर प्रार्थी को नियुक्ति नहीं दी और अन्य लोगों को भर्ती कर लिया।इस पर प्रार्थी ने एक प्रार्थनापत्र धारा—2—ए,25—एफ जी एवं 25—एच व 2 आर.ए. व नियम—77—78के तहत सहायक श्रम आयुक्त केन्द्रीय,जयपुर के यहां प्रस्तुत की,लेकिन अप्रार्थी ने समझौता वार्ता में कोई रुचि नहीं ली और वार्ता असफल हो जाने पर सहायक श्रम आयुक्त केन्द्रीय ने असफल वार्ता प्रतिवेदन भारत सरकार को प्रेषित कर दी,जिस पर भारत सरकार ने न्यायाधिकरण के समक्ष यह औद्यागिक विवाद प्रस्तुत किया है। जिसमें प्रार्थी ने अभिकथन किया है कि प्रार्थी की सेवामुक्ति औद्योगिक विवाद अधिनियम,1947 के विभिन्न प्रावधानों का उल्लंघन करके की गयी है,अतः प्रार्थी की सेवामुक्ति अवैध एवं अनुचित है,क्योंकि प्रार्थी की सेवामुक्ति करने से पूर्व ना तो उसे काई कारण बताया गया और ना ही कोई आरोपपत्र दिया गया और ना ही कोई विभागीय जांच की गयी तथा ना ही कोई सुनवाई का अवसर ही दिया गया तथा ना तो उसे एक माह का नोटिस ही दिया गया और ना ही नोटिस के बदले एक माह का वेतन दिया गया और ना ही कोई छंटनी मुआवजा ही दिया गया,जबकि प्रार्थी श्रमिक ने एक कलैण्डर वर्ष में 240दिन से अधिक दिनों तक कार्य किया है। यही नहीं प्रार्थी की सेवामुक्ति के समय उससे जूनियर अनेक श्रमिक कार्य कर रहे थे तथा प्रार्थी को प्राथमिकता नहीं दी गयी और अप्रार्थीगण ने ना तो कोई वरिष्ठता सूची बनाई और ना ही प्रकाशित की है। इस प्रकार नियम 77—78 की अनुपालना वरिष्ठता सूची न बनाकर की गयी है। इसके साथ ही अप्रार्थीगण द्वारा प्रार्थी की सेवामुक्ति के बाद अनेक श्रमिक को कार्य पर रखकर नई नियुक्तियां की गयी हैं,जिसमें श्री किशनलाल व अन्य व्यक्तियों को रखा गया है तथा प्रार्थी की सेवामुक्ति के बाद अप्रार्थीगण ने स्थायी नियुक्ति देकर व्यक्तियों को रखा है। इस प्रकार प्रार्थी की सेवामुक्ति औद्योगिक विवाद अधिनियम 1947की धारा—2आर.ए. में वर्णित अनफेयर लेबर प्रेक्टिस है।अतः प्रार्थी की उपरोक्त सेवामुक्ति को अवैध एवं अनुचित घोषित कर प्रार्थी की सेवाऐं निरन्तर मानते हुए उसे पुनः कार्य पर रखवाया जावे तथा प्रार्थी की बकाया समस्त वेतन एवं वेतनलाभ दिलवाये जाने की प्रार्थना की है।

विपक्षी विभाग द्वारा स्टेटमेंट ऑफ क्लेम का जवाब प्रस्तुत कर अभिकथन किया गया है कि प्रार्थी को एक्स्ट्रा डिपार्टमेंटल कन्डीडेट के रुप में कभी भी नियुक्ति नहीं दी गयी थी तथा न ही दैनिक वेतन भोगी कर्मचारी के रुप में नियुक्ति दी गई ।वह किसी ई.डी.मेलमैन के साप्ताहिक अवकाश या अन्य अवकाश पर रहने पर छुटटी पर जाने वाले ई. डी.की जिम्मेदारी पर उसकी ऐवजी के रुप में नहीं बनता है। अतिरिक्त विभागीय मेलमेन के पद पर नियुक्ति हेतु

निर्धारित प्रक्रिया अपनायी जाती है और प्रार्थी को बता दिया गया था कि अतिरिक्त विभागीय मेलमेन का पद रिक्त होने पर रोजगार कार्यालय द्वारा निर्धारित प्रारुप में प्रार्थनापत्र प्राप्त होने वाले प्रार्थियो में से ही चयन किया जाता है और इस प्रक्रिया में प्रार्थी का आवेदनपत्र प्राप्त नहीं हुआ था और जब प्रार्थी को सरकारी सेवा में नियमानुसार नियुक्ति ही नहीं दी गई तो उसको हटाया जाने के लिए नोटिस दिये जाने, एक माह का वेतन दिये जाने एवं छंटनी मुआवजा आदि के प्रावधान लागू नहीं होने का अभिकथन करते हुए प्रार्थी का स्टेटमेंट ऑफ क्लेम खारिज किये जाने की प्रार्थना की है।

प्रार्थी की ओर से प्रार्थी साक्षी 1 सोहनलाल को साक्ष्य में परीक्षित करवाया गया है, जबकि विपक्षी की ओर से अप्रार्थी साक्षी सं.1 के. एम. शर्मा व अप्रार्थी साक्षी सं. 2 बीरबल मीना को साक्ष्य में परीक्षित करवाया गया है।

मैंने उभय पक्ष के विद्वान प्रतिनिधिगण की बहस सुनी एवं पत्रावली का परिशीलन किया।

प्रार्थी के विद्वान प्रतिनिधि ने बहस की कि प्रार्थी को विपक्षी संख्या–1 के कार्यालय में दिनांक 15.02.1990 को अतिरिक्त विभागीय कर्मचारी के रुप में नियुक्ति दी गई थी, जो दैनिक वेतन भोगी कर्मचारी के रुप में दी गई थी।प्रार्थी ने दिनांक 15.2.1990 से दिनांक 12.11.1994 तक कार्य किया और दिनांक 12.11.1994 को विपक्षी संख्या–1 के निरीक्षक श्री खेताराम ने प्रार्थी को सेवामुक्त कर दिया,जबकि प्रार्थीने लगातार करीब चार वर्ष से अधिक दैनिक वेतन भोगी कर्मचारी के रुप में विपक्षी विभाग में कार्य किया है तथा निरन्तर एक वर्ष के कलैण्डर में भी कार्य किया है,जो 240 दिन से अधिक दैनिक वेतन भोगी कर्मचारी के रुप में कार्य करने से प्रार्थी को बिना वेतन नोटिस दिए और बिना छंटनी मुआवजा दिये ही प्रार्थी को सेवामुक्त कर दिया,जबकि औद्योगिक विवाद अधिनियम 1947 की धारा–25 एफ.की पालना करना आवश्यक था तथा प्रार्थी से बाद में इसके प्रतिकार में विपक्षीगण के विद्वान प्रतिनिधि ने बहस की कि प्रार्थी को कोई नियुक्ति नहीं दी गई थी, बल्कि ई.डी.मेलमेन साप्ताहिक अवकाश पर रहने के कारण ऐवजी के रुप में प्रार्थी कार्य करता था तथा ऐवजी को कोई वेतन नोटिस देना आवश्यक नहीं था तथा न ही प्रार्थी ने 240 दिन अवकाश में काम किया है, इसलिए औद्योगिक विवाद अधिनियम 1947 की धारा–25 एफ.की पालना करना भी आवश्यक नहीं था।

अब न्यायाधिकरण के समक्ष अवधारणीय बिन्दु यह है कि क्या प्रार्थी श्रमिक ने विपक्षी विभाग में एक कलैण्डर वर्ष निरन्तर सेवा में रहा है?

इस सम्बन्ध में प्रार्थी साक्षी सोहनलाल की साक्ष्य का परिशीलन करें तो इस गवाह ने अपनी मुख्य परीक्षा तो स्टेटमेट ऑफ क्लेम में वर्णित अभिकथनों के आधार पर शपथपत्र पर दी है तथा जिरह में इस गवाह ने बताया है कि उसको विभाग में सुभाष की जगह काम पर रखा था तथा यह बात उसने अपने शपथपत्र में नहीं लिखी है तथा लिखकर भी उसको दिया था तथा सुभाष की जगह खाली होने का कोई विज्ञापन नहीं निकाला था तथा वह दसवीं फेल है उसने रोजगार कार्यालय में रजिस्ट्रेशन करवा रखा है।दिनांक 12.11.1994 से पहले ही सुभाष मेलमेन बन चुका था तथा जिरह में इस गवाह ने बताया है कि अतिरिक्त विभागीय कर्मचारी को स्थाई कर्मचारी अवकाश पर जाने पर रखा जाता हो तो उसे पता नहीं है तथा उसे 18 रुपये प्रतिदिन देते थे तथा उसकी छुटटी रविवार तथा होली दीवाली पर मिलती थी तथा जिरह में इस गवाह ने बताया है कि वर्ष 1990 में उसने कितने दिन कार्य किया उसे याद नहीं है,लेकिन उसने रविवार को छोडकर पूरे वर्ष कार्य किया है तथा वर्ष 1993 में भी छुटिटयों को छोडकर पूरा साल काम किया तथा किशनलाल ने भी पूरे वर्ष काम किया जो उसके बाद लगा,तारीख का उसे ध्यान नहीं है,किसकी जगह लगा यह भी उसे ध्यान नहीं है। जिरह में इस गवाह ने यह भी बताया है कि उसने शपथपत्र में जगदीश तथा मदनलाल उससे जूनियर होना लिखा है तथा जिरह में इस गवाह ने स्वीकार किया है कि जगदीश व मदनलाल व किशनलाल को स्थाई नियुक्ति विभाग ने नियमानुसार सन 1994 में दी, इनकी नियुक्ति के खिलाफ वह न्यायालय में नहीं गया तथा उसने सन 1994 में यह केस किया हैं।

विपक्षी साक्षी के. एम. शर्मा ने अपनी मुख्य परीक्षा तो जवाब में वर्णित अभिकथनों के आधार पर शपथपत्र पर दी है तथा जिरह में इस गवाह ने बताया है कि वह सन् 1990 से 1994 के बीच बीकानेर में इन्स्पैक्टर था। जिरह में इस गवाह ने बताया है कि सोहनलाल ने उसके अधीन काम किया या नहीं रिकार्ड के आधार पर ई.डी.ऐवजी के पद पर कार्य करना प्रतीत होता है तथा जिरह में इस गवाह ने इस सुझाव से इन्कार किया है कि सोहनलाल ने सन 1990 में दैनिक वेतन भोगी के रुप में काम किया हो तथा 1990 से 1994 में कब–कब ई.डी.ऐवजी के पद पर कार्य किया हो तो उसे पता नहीं है तथा ऐसा कोई रिकार्ड उसने पेश नहीं किया है कि सोहनलाल कर्मचारी था।

विपक्षी साक्षी सं. 2 बीरबल मीना ने अपनी मुख्य परीक्षा तो जवाब में वर्णित अभिकथनों के आधार पर शपथपत्र पर दी है तथा प्रतिपरीक्षण में इस गवाह ने बताया है कि उसने रिकार्ड पूरा नहीं देखा,सिर्फ नियम देखकर आया है तथा उसने कोई रिकार्ड पेश नहीं किया है तथा सूरतगढ में कार्यरत कर्मचारी कब–कब, कौन–कौन कर्मचारी अवकाश पर गये उनके स्थान पर किस–किस ने कार्य किया है उसे पता नहीं हैं।

उभय पक्ष की साक्ष्य का अवलोकन,विश्लेषण एवं विवेचन से न्यायाधिकरण का विनम्र निष्कर्ष इस प्रकार है कि प्रार्थी साक्षी सोहनलाल ने अपनी मुख्य परीक्षा में यह साफ तौर पर अभिकथन किया है कि दिनांक 15.2.1990 को दैनिक वेतन भोगी कर्मचारी के रुप में उसको अप्रार्थी विभाग द्वारा नियुक्ति दी गई थी तथा उसे दिनांक 12.11.1994 को मौखिक आदेश से सेवामुक्त कर दिया।अब इस गवाह की जिरह का परिशीलन करें तो उसमें भी यह बात आयी है कि

उसने सन 1990 से 1993 में अवकाश को छोडकर पूरे वर्ष काम किया है तथा उससे जूनियर जगदीश, मदन तथा किशनलाल को स्थायी नियुक्ति विपक्षी विभाग ने दी है तथा सन 1990 से सन 1994 तक लगातार इस श्रमिक ने अतिरिक्त विभागीय श्रमिक के रुप में विपक्षी विभाग में कार्य न किया हो, ऐसी इस गवाह के प्रतिपरीक्षण में विपरीत स्थिति नहीं आई है तथा विपक्षी का जो यह अभिकथन रहा है कि प्रार्थी ने किसी के ऐवज में काम किया लेकिन किसके ऐवज में काम किया और कितने दिन काम किया, ऐसा विपक्षी की साक्ष्य से प्रकट नहीं है, जबकि प्रार्थी को तो विपक्षी विभाग के दस्तावेज लेना मुश्किल था जबकि विपक्षी विभाग केन्द्रीय सरकार का विभाग है,जिसके पास सारा रिकार्ड रहता है, जबकि 18 रुपये प्रतिदिन श्रमिक को दिया जाना प्रार्थी की साक्ष्य से आया है। अतः यदि प्रार्थी को किसी अतिरिक्त विभागीय कर्मचारी के ऐवज में रखा जाता है तो उसका रिकार्ड विपक्षी विभाग न्यायाधिकरण के समक्ष पेश कर स्थिति स्पष्ट कर सकता था,लेकिन महत्वपूर्ण साक्ष्य ऐवजी के रुप में कार्य करने का कोई दस्तावेज विपक्षी की ओर से पेश नही किया गया है, बल्कि प्रार्थी की साक्ष्य से यह आया है कि सुभाष नाम का अतिरिक्त विभागीय कर्मचारी था उसे मेलमेन बना दिये जाने से उसकी जगह खाली होने से उसके स्थान पर प्रार्थी सन 1990 से रखा था। प्रार्थी ने कोई कार्य विपक्षी विभाग में अतिरिक्त विभागीय कर्मचारी के रुप में नहीं किया हो,ऐसी भी कोई प्रलेखीय साक्ष्य विपक्षी कीओर से पेश कर प्रार्थी की साक्ष्य का खण्डन नहीं किया गया है तथा सन 1990 से 1994 तक अतिरिक्त विभागीय कर्मचारी के रुप में प्रार्थी ने कार्य न किया हो,ऐसी कोई विपक्षी की खण्डनकारी साक्ष्य नहीं है बल्कि प्रार्थी स्वयं से भी इस बिन्दु पर कोई प्रतिपरीक्षण नहीं है तो फिर प्रार्थी की साक्ष्य पर अविश्वास करने का कोई कारण न्यायाधिकरण के समक्ष नहीं है।अतः प्रार्थी द्वारा एक कलैण्डर वर्ष में 240 दिन कार्य करना प्रार्थी की साक्ष्य से बखूबी साबित है, तो फिर औद्योगिक विवाद अधिनियम 1947 की धारा—25एफ. के आज्ञापक प्रावधान की पालना सेवामुक्ति करने से पूर्व करना आवश्यक था,जो विपक्षी विभाग द्वारा नहीं की गई है तथा प्रार्थी से जूनियर को भी स्थाई किया जाना प्रार्थी की साक्ष्य से आया है, इसलिए प्रार्थी सोहनलाल विपक्षी विभाग में पुनर्स्थापन उसी पद पर होने का हकदार है तथा प्रार्थी कों जो सेवामुक्त किया गया है,वह न्यायोचित नहीं है तथा प्रार्थी को एक नियमित वेतन श्रृंखला में नहीं होने से उसे बैक वेजेज माले के तथ्य व परिस्थिति में दिलाये जाने का कोई औचित्य नहीं है, बल्कि प्रार्थी उसी पद पर बहाल होने का हकदार है तथा बहाल होने के पश्चात् पारिणामिक परिलाभ प्राप्त करने का हकदार हैं।

अतः उपरोक्त विवेचन के फलस्वरुप इस रेफरेन्स का निम्न प्रकार उत्तर देते हुए अधिनिर्णय पारित किया जाना समीचीन प्रतीत होता हैः—

अधिनिर्णय

अतः निरीक्षक आर.एम.एस. एसटी डिवीजन बीकानेर के द्वारा प्रार्थी श्रमिक सोहनलाल अतिरिक्त विभागीय कर्मचारी को दिनांक 12.11.1994 को सेवा पर्यावसान किया जाना न्यायोचित नहीं है तथा प्रार्थी श्रमिक उसी पद पर पुनःबहाल होने का हकदार है,जो विपक्षी विभाग प्रार्थी को उक्त पद पर इस अवार्ड की तिथि से तीन माह के अन्दर पुर्नस्थापन करे तथा मामले की तथ्य व परिस्थिति में पक्षकार खर्चा अपना अपना स्वयं वहन करेंगे।

गिरीश कुमार शर्मा, न्यायाधीश

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1288.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, अध्यक्ष एवं प्रबंध निदेशक, मजगांव डॉक शिपबिल्डर लिमिटेड, मुंबई एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, मुंबई के पंचाट (संदर्भ संख्या सीजीआईटी-2/36 ऑफ 2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2018 को प्राप्त हुआ था।

[सं. एल-14011/28/2016-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st August, 2018

S.O. 1288.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGIT-2/36 of 2017) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the Chairman & Managing Director, Mazgaon Dock Shipbuilders Ltd., Mumbai and their workmen & President, Mazgaon Dock Staff Association, Mumbai, which was received by the Central Government on 13.08.2018.

[No. L-14011/28/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/36 of 2017

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

MAZGAON DOCK SHIPBUILDERS LTD.

The Chairman & Managing Director,
Mazgaon Dick Shipbuilders Ltd.,
Dockyard Road, Mazgaon,
Mumbai – 400 010

AND

THEIR WORKMEN

The President,
Mazgaon Dock Staff Association,
Dockyard Road,
Mumbai – 400 010.

APPEARANCES :

FOR THE EMPLOYER : Mr. P. M. Palshikar, Advocate

FOR THE WORKMEN : Absent

Mumbai, dated the 23rd July, 2018

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-14011/28/2016 – IR (DU) dated 28.08.2017. The terms of reference given in the schedule are as follows :

> *"Whether the demand of Mazgaon Dock Staff Association for introduction of Pension Scheme to the Non-Executive (Non-technical & technical Staff, including sub staff) at par with the Pension Scheme introduced for Executive Officers with 7% employer contribution on basic pay and D.A. with retrospective effect from 01.01.2007, is just and proper ? If so, what relief the Association / Non-Executive Employees of Mazgaon Dock Shipbuilders Ltd. are entitled to and from which date ?"*

2. After the receipt of the reference, both the parties were served with the notices.

3. On going through Roznama, it appears that the union is absent since 21.11.17. The union has not filed statement of claim inspite of opportunity being given, as such the union has not raised the claim by filing statement of claim. Hence the Reference is liable to be disposed off for want of evidence and accordingly the Reference is disposed off with no order as to costs.

ORDER

Reference is disposed off with no order as to costs.

Date: 23.07.2018

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1289.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मैसर्स ब्लू शील्ड संरक्षण नेटवर्क प्राइवेट लिमिटेड, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 45/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-42012/66/2016-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st August, 2018

S.O. 1289.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 45/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the M/s. Blue Shield Protection Network Pvt. Ltd., New Delhi & Others and their workmen, which was received by the Central Government on 06.08.2018.

[No. L-42012/66/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID No. 45 of 2016

Sh. Surinder Singh S/o. Sh. Jai Singh, R/o Vill-Raipur Rodan,
PO-Arjeheri, Tehsil-Nilokheri, Distt. Karnal(Haryana) …Workman

Versus

1. M/s. Blue Shield Protection Network Pvt. Ltd. L-11,
Green Park Extension, New Delhi.

2. M/s. Soma Isolux Pvt. Ltd. Regd. Office, Model Town,
Near Maruti Car Driving School, Ambala-Haryana …Management

AWARD

1. In the present case, a reference was received from the appropriate Government vide Letter No.L-42012/66/2016-IR(DU) dated 20.09.2016 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), for adjudication of a dispute, terms of which are as under:

> ***"Whether the action of the management M/s Blued Shield Protection Network Pvt. Ltd. In terminating the services of the workman Sh. Surinder Singh S/o Sh. Jai Singh, Security Guard w.e.f. 31.03.2015 is legal and justified? If not, what relief the workman is entitled to and from which date?"***

2. Notice was issued to both the parties to appear before this Tribunal. However, none appeared initially on behalf of either party to pursue the case.

3. Later on, an application was moved by the workman Sh. Surinder Singh, wherein he has alleged that he has amicably settled the matter with the management and he has no claim against the management.

4. Since the workman himself is not interested in adjudication of the reference on merits as such, this Tribunal is left with no option to dispose of the reference without recording any evidence. Accordingly, no dispute/no claim award is hereby passed in view of the final settlement already arrived at between the parties. It is held that now workman is not entitled for any relief. Let copy of this award be sent to the Central Government for publication as required under Section 17(2) of the Act.

Dated:-28.05.2018

A. C. DOGRA, Presiding Officer-cum-Link Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1290.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, भारती एयरटेल लिमिटेड, चंडीगढ़ और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 30/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st August, 2018

S.O. 1290.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 30/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the

General Manager, Bharti Airtel Ltd., Chandigarh & Others and their workmen, which was received by the Central Government on 06.08.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID No. 30 of 2012

Sh. Sandeep Kumar Sindhu, S/o Om Parkash, Age 31 years,
R/o H.No.145 (Top Floor), Sector 19, Panchkula (Haryana) …Workman

Versus

1. General Manager, Bharti Airtel Ltd. Plot No.21,
IT Park, Chandigarh.

2. The Managing Director, Bharti Airtel Services Ltd.,
Head Office Airtel Center, Plot No.16,
Udyog Vihar, Phase IV, Gurgaon (Haryana) …Management

AWARD

1. In the present case, workman directly filed claim under Section 2-A of the Industrial Disputes Act, 1972, regarding the forcibly termination by the management. It is alleged that workman was engaged by the management on 3.4.2007. He was performing his duty sincerely and honestly from time to time and his work was appreciated by the management. Later on, the management verbally directed the workman not to report for duty and management have already obtained resignation of the workman electronically.

2. Notice of the petition was served upon the management, who had filed reply to the claim petition. Management had taken preliminary objections that claim is not legally maintainable. It is denied that workman was in the employment of the management. In fact, the workman was resigned from the service vide letter dated 30.04.2012, therefore, now claim filed by the workman is not legally maintainable.

3. It is clear from the record that workman has filed his affidavit by way of evidence and thereafter workman has not appeared on several dates of hearing. Since the workman has not turned up so as to depose before this Court in support of the allegations made in the statement of claim as such, his affidavit is of no value. This clearly shows that workman is not interested in adjudication of the case on merits. In the absence of statement of the workman or any other admissible evidence on record, it is held that workman has failed to prove the cause against the management. Accordingly, no dispute/no claim award is passed. Let copy of this award be sent for publication as required under Section 17(2) of the Act.

Dated:-28.05.2018

A. C. DOGRA, Presiding Officer-cum-Link Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1291.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, पोस्ट मास्टर जनरल, डाक विभाग, देहरादून और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 21/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-40011/09/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st August, 2018

S.O. 1291.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 21/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the

Post Master General, Department of Post, Dehradun & Others and their workmen, which was received by the Central Government on 06.08.2018.

[No. L-40011/09/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Case No. ID No. 21 of 2014

Sh. Shiv Ji Singh S/o Sh. Ram Briksh Singh,
Katoratal, Kurmanchal Colony, Kashipur,
Udham Singh Nagar, Dehradun …Workman

Versus

The Post Master General, Department of Posts,
Uttarakhand Circle, Rajpur Road,
Dehradun and another …Management

AWARD

Dated:- 02.07.2018

1. A reference was received from the Government of India vide Reference No. L-40011/09/2014-IR (DU) Dated 05.08.2014 under Clause (d) of sub-section (1) and sub-section (2A) Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) for adjudication of an industrial dispute, terms of which are as under:-

> ***"Whether the workman has earned right of absorption having been engaged for a considerable period of time regularly even though on daily wages? And whether the management of post master general, Uttarakhand circle should reinstate him permanent regular employee status with immediate effect?***

2. It is clear from the statement of claim that workman was engaged on 01.04.1984 as Frash/Mali/Caretaker at Dak Ghar, Kashipur, by the management. The workman has been working on the Post of Frash at Dak Ghar, Kashipur since 09.04.1984 and Superintendent of Post Office vide a memo No.A-217/CP Staff dated 30.12.1998 ordered the workman to perform duty for 8 hours instead of 6 hours. The service of the workman was terminated by the management on 16.12.2010 without issuance of any show cause notice and without holding any formal enquiry against the workman. The workman has also written to the management on 16.03.2002 and 27.11.2008 for conferring temporary status on him, but of no views. The workman has prayed for his reinstatement with back wages.

3. The claim was contested by the management by filing written statement, wherein the management has accepted the factum of engagement of workman w.e.f. 01.04.1984 as Frash. It is also admitted by the management that workman was removed from service on 16.12.2010 as his services were not required. Moreover, the Government has not formulated any policy for the regularisation of such casual workman. It is also admitted that on 01.01.1999 the working hours of the workman were increased from 6 hours to 8 hours. It is also alleged that workman was not entitled for temporary status which was given to the Group 'D' employees who had worked for 8 hours from November 1989 to September 1993.

4. The workman in support of his case examined himself and tendered in evidence his affidavit.

5. It is clear from the pleadings of the parties that workman was engaged on 01.04.1984 and his services were admittedly terminated on 16.11.2010 by the management. It is not the case of the management that workman has not worked continuously and regularly with the management during the above period. The stand of the management is that he could not have conferred the temporary status in view of the policy of the Government. Admittedly in the present case, no show cause notice was served upon the workman before order of his termination by the management. This fact has been duly admitted by the management even in the written statement. The workman was also not given one month salary in lieu of such notice as required under Section 25-F of the Act.

6. There is merit in the contention of the management that workman was engaged as casual part time worker as such he is not covered by the definition of the workman contained in Section 2(S) of the Act. In this regard, it is useful to refer to the decision of the Hon'ble Apex Court in the case of Devinder Singh Vs. Municpal Council, Sanaur AIR 2011 S.C. 2532 wherein the Court dealt with the definition of the workman as contained in Section 2(S) and held as under:-

"The source of employment, the method of recruitment the terms and conditions of employment contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the act. The definition of the workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fix hours is not a workman."

7. In the above case, the Hon'ble Apex Court also referred to earlier judgments and rejected the contention of the management that casual worker or daily wager employee are not included in the definition of workman as claimed in Section 2(S) of the Act.

8. Equally settled is the position under the law when services of a workman have been terminated by the management in violations of provisions of Section 25-F of the Act, in that eventuality, the action of the management has been held to be arbitrary and illegal and cannot stand the scrutiny of the law. Since the factum of engagement of the workman in the year 1984 stands admitted in the pleadings and management has concededly not issued one month notice or paid one month salary. In lieu of such notice as required under Section 25-F of the Act as such, the action of the management in terminating the services of the workman is held to be totally arbitrary and illegal.

9. Now the residual question is whether the workman is entitled for reinstatement and to be regularised as permanent employee or not? It is clear from the evidence of management that when workman was admittedly taken as daily wager and he was also not given temporary status in view of the policy of the Government in such circumstances, the question of regularisation or absorbing the workman permanently will not arise.

10. It has been held in the case of Hari Nandan Prasad & Anothers Vs. Food Corporation of India and another(2014)7 SCC 190 as under:-

"The Constitution Bench judgment in Umadevi (3), (2006) 4 SCC 1 has applicability in the matters concerning industrial adjudication. In U.P. Power Corp., (2007) 5 SCC 755 the Supreme Court emphasised the underlying message contained in Umadevi (3) case to the effect that regularisation of a daily-wager, who has not been appointed after undergoing the proper selection procedure, etc. is impermissible as it was violative of Article 14 of the Constitution of India and this principle predicated on Article 14 would apply to the Industrial Tribunal as well inasmuch as three cannot be any direction to regularise the services of a workman in violation of Article 14 of the Constitution. This would mean that the Industrial Court would not issue a direction for regularising the services of a daily wage worker in those cases where such regularisation would tantamount to infringing the provisions of Article 14 of the Constitution. But, this would not deter the Industrial Tribunals/Labour Courts from issuing such direction, which the industrial adjudicators otherwise possess, having regard to the provisions of Industrial disputes Act specifically conferring such powers. This is recognised by the Court in U.P. Power Corpn case. The Court in Maharashtra SRTC, (2009) 8 SCC 556 also accepted the legal proposition that courts cannot direct creation of posts".

11. In view of the dicta in the above case, this Tribunal cannot order regularisation or absorbing of the workman. Moreover, when workman is out of service at the time of making the reference, the question of regularisation would not arise.

12. The other vital question is whether the workman is entitled for reinstatement with back wages, it has been held in Hari Nandan Prasad (supra) case that question of reinstatement would depend on facts of each case and relief by way of reinstatement with back wages cannot be granted in every case.

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after

reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation."

13. In the present case also the Tribunal is of the view that workman being daily wager cannot be ordered to be reinstated and keeping in view the latest trends and judgments of the Hon'ble Apex Court, it is appropriate to grant reasonable compensation. The Hon'ble apex court in the case of District Development Officer & Anr. Versus Satish Kantilal Amrelia 2018 LLR 225 held that normally a daily wager cannot claim regularisation and payment of reasonable compensation is always useful in such cases in the above case, Hon'ble Apex Court granted 2.50 lac (Two Lac Fifty Thousand) as compensation in lieu of reinstatement to a daily wager who has served with the management hardly from two to two and half year. To my mind, having overall regard of the service of the workman, i.e. during the year 1984-2010, an amount of Rs.5,00,000/- (Five Lac) is held to be just and reasonable to the workman to which he is entitled. The workman will also be entitled for interest @ 6% per annum of the amount from the date of making the reference till its payment in case the amount is not paid within 3 months from the publication of the award. Let copy of the award be sent to the Central Government for publication as required under Section 17 (2) of the Act.

Dated:-02.07.2018
Place : Chandigarh

A. C. DOGRA, Presiding Officer-cum-Link Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1292.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, गार्डन रीच शिप बिल्डर्स एंड इंजीनियर्स लिमिटेड के प्रबंधन के संबंध में नियोक्ता एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 08/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st August, 2018

S.O. 1292.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 08/2018) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of Garden Reach Ship Builders & Engineers Ltd. and their workmen, which was received by the Central Government on 13.08.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 08 of 2018

Parties:

Employers in relation to the management of
Garden Reach Ship Builders & Engineers Ltd.

AND

Their workmen.

Present:

Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. Ranjay De, Ld. Counsel.

On behalf of the Workmen : Mr. Madhu Sudan Dutta, Ld. Counsel.

Dated: 6th August, 2018. Industry : Ship Building.

AWARD

By Order No. 220-IR/IR/10L-140/92 dated 7th February, 1995 the Government of Government of West Bengal, Labour Department in exercise of its powers under Section 10 read with (2A) of the Industrial Disputes Act, 1947 referred the following dispute to the Second Industrial Tribunal, West Bengal for adjudication:

"Whether the dismissal of service of Shri Pradip Kr. Ganguly w.e.f. 4.4.94 is justified?

What relief, if any, is he entitled to?"

2. Consequent upon reference of above dispute to the Second Industrial Tribunal, West Bengal and thereafter transfer of the case to this CGIT by the Hon'ble the Supreme Court by order dated 08.12.2017 passed in Petition for Special Leave to Appeal (Civil) No. 2556 of 2012, workman concerned challenged the validity of domestic enquiry which was decided by this Tribunal on 26th June, 2018.

3. Brief facts of the case are that the concerned workman, Shri Pradip Kumar Ganguly was a Car Driver in M/s. Garden Reach Ship Builders & Engineers Ltd. who was served with charge sheet No. 2/1992 dated 3rd March, 1992 alleging following acts of misconduct of the certified standing orders:

"Clause - 5 Dishonesty in connection with the company's business or properly.

Clause - 10 Threatening, intimidating and coercing other employees……. threat of assault, either provoked or otherwise.

Clause 11 Commission of an act subversive of good behavior or discipline of the Company"

An enquiry was held by the Manager, Administration who submitted his report holding the concerned workman guilty of the charges leveled against him. Copy of the report was forwarded to the concerned workman who submitted his representation on 29th March, 1994. The disciplinary authority on consideration of the chargesheet, reply to the chargesheet, proceedings of enquiry, findings recorded in the enquiry report and representation made by the concerned workman against the findings, concurred with the decision recorded in the said enquiry. Since the charges leveled against the concerned workman were proved and were found grave and serious, concerned workman was dismissed from service of the company on 4th April, 1994.

4. On challenge of domestic enquiry by the concerned workman, this Tribunal vide order dated 26th June, 2018 came to the conclusion that the enquiry was valid and proper. Therefore, the case was fixed for hearing of parties on the point of adequacy of punishment under Section 11A of the Industrial Disputes Act, 1947 which may be reproduced below:

"**11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen –** Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require;"

5. Section 11-A of the Act was incorporated with effect from 15th December, 1971 on recommendation of International Labour Organization to enable workman aggrieved by termination of his service to appeal against the termination to a neutral body such as an arbitrator, a court or an arbitration committee or a similar body and that neutral body concerned should be empowered to examine the reasons given in termination of employment. Elucidating the above principles Hon'ble the Apex Court in Delhi Cloth & General Mills Company Ltd. v. Ludh Budh Singh, AIR 1972 SC 1031 held that where enquiry is found to be defective the employer shall have to be given a chance of evidence before the Tribunal for justifying its action, but if it's finding on preliminary issue is in favour of the management, then no additional evidence need be cited by the management.

6. In General Secretary, South Indian Cashew Factories Workers' Union v. The Managing Director, Kerala State Cashew Development Corporation Ltd. & Ors., 2006(6) SCALE 44 it was held by Hon'ble the Apex Court that where the enquiry is valid and proper then in absence of allegation of unfair labour practice or victimization, the industrial forum should not interfere with the punishment imposed. In M/s Tata Engineering & Locomotive Co. Ltd. v. N.K. Singh, 2006 (1) SCALE 559 Hon'ble the Apex Court has held that where domestic enquiry is found to be valid and proper, the order of dismissal should not be interfered with. The relevant portion of the judgment may be reproduced below:

"8. ……The Labour Court having found that the domestic enquiry was fair, proper and in accordance with the principles of natural justice, should not have interfered with the order of dismissal. The High Court clearly missed to notice that the charges were serious in nature."

7. Learned counsel for the workman has submitted that even after domestic enquiry having been held legal, valid and proper, there is scope for Industrial Tribunal to go into the merit of the case and examine whether the charges have been proved or not. He has further submitted that the two jerricanes one filled with two and half liters of petrol and another

empty have not been produced before this Tribunal, no expert opinion was sought to identify the contents of jerrican. There is also no evidence of alleged threatening before the Enquiry Officer. Therefore, allegations made against the workman concerned were based on suspicion, conjectures and surmises.

8. Now question arises as to what is the extent of judicial review by the Industrial Tribunal under Section 11A of the Industrial Disputes Act, 1947. Hon'ble the Apex Court has elaborated the ambit and scope of Section 11A of the Industrial Disputes Act in Management of Bharat Heavy Electricals Ltd. v. M. Mani & Anr., 2018 LLR 2. Relevant portion of the judgment may be reproduced for better appreciation of the controversy in the case –

"17. In our opinion, once the Labour Court upheld the departmental enquiry as being legal and proper then the only question that survived for consideration before the Labour Court was whether the punishment of "dismissal" imposed by the appellant to the respondents was legal and proper or it requires any interference in its quantum.

18. In other words, the Labour Court should have then confined its enquiry to examine only one limited question as to whether the punishment given to the respondents was, in any way, disproportionate to the gravity of the charge leveled against them and this, the Labour Court should have examined by taking recourse to the provisions of Section 11-A of the Industrial Disputes Act, 1947. ……"

(Emphasis supplied by me)

9. Hon'ble the Apex Court by laying down the above principles of judicial review by the Industrial Tribunal under Section 11A of the Industrial Disputes Act has set at rest the controversy in the case. From the above judgment it is clear that except reviewing the action of the management with regard to the punishment, the Tribunal has no power to go into merit of the charge leveled against the concerned workmen.

10. In catena of judicial pronouncements Hon'ble the Apex Court has examined action of the management and has expressed from time to time its views on power of Tribunal to examine the quantum of punishment. It has been held several times that the Tribunal can interfere in the discretion of the management only when the punishment imposed by the management is highly disproportionate or grossly disproportionate. In Christian Medical College Employees' Union & Anr. V. Christian Medical College Vellore Association & Anr., 1988 (1) LLN 9 Hon'ble the Supreme Court has observed –

"14. …….. Section 11-A which has been introduced since then into the Act which confers the power on the Industrial Tribunal or the Labour Court to substitute a lesser punishment in lieu of the order of discharge or dismissal passed by the management again cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under Section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of management under Sec. 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision. ……"

Similarly, in Hombe Gowda Eductional Trust & Anr. V. State of Karnataka & Ors., 2006 (1) SCC 430 Hon'ble the Supreme Court has held

"18. The Tribunal's jurisdiction is akin to one under Section 11-A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.

19. This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercises its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of punishment.

20. Assaulting a superior at a workplace amounts to an act of gross indiscipline. The Respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institute in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as shock one's conscience.

21. A person, when dismissed from services, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important. Keeping the aforementioned principles in view, we may hereinafter notice a few decisions of this Court."

(Emphasis supplied by me)

11. Now coming to the facts of the instant case, the concerned workman, Shri Pradip Kumar Ganguly is alleged to have been caught red-handed by Senior Assistant Security Officer while exchanging two and half liters of polythene jerrican containing petrol with an empty jerrican with an outsider. The learned counsel for the workman has submitted that the charges are not serious enough to dismiss him from services of the company. According to the learned counsel for the workman a lenient approach in awarding lesser punishment would be sufficient and would serve the purpose. For his argument learned counsel has cited Rama Kant Mishra v. State of U.P. & Ors., 1982-II-LLJ 472, R.M. Parmar v. Gujarat Electricity Board, 1983-I-LLJ 261, Alliance Mills (Lessees) Pvt. Ltd. v. State of West Bengal & Ors., 1991-I-LLJ 71 and Virudhachalam Co-op. Urban Bank Ltd. v. Labour Court, Cuddalore & Anr., 1995-II-LLJ 173. In above cited cases charges leveled against the concerned workmen were not of dishonesty. From the perusal of above cases it is not found that the charge was either of breach of peace or using indiscreet language. Therefore, the principle of disproportionate punishment was followed by the Courts. However, in R. M. Parmar v. Gujarat Electricity Board (supra) was a case of theft of scrap material such as nut-bolts valued at less than Rs.50/- in which Hon'ble the Gujarat High Court held that the employee concerned was not holding any sensitive post where he had to deal with stores or cash. He was a helper and had to do mainly physical labour. Hence lenient approach was adopted. However, Hon'ble the Apex Court did not approve it and in Management of Bharat Heavy Electricals v. M. Mani (supra) has held

"The act of theft by an employee while on duty is a serious charge. This charge once proved in enquiry, the employer is justified in dismissing the employee from service."

12. Past conduct of the workman concerned is also not a relevant factor. It cannot be said that earlier he was not involved in any act of dishonesty. In Depot Manager, APSRTC v. B. Swamy, 2007 (5) SCALE 637 It has been observed by Hon'ble the Apex Court

"7. .....If he is dishonest in the performance of his duties, he is guilty of serious misconduct and the gravity of the misconduct cannot be minimized by the fact that he was not earlier caught indulging in such dishonest conduct. There is no guarantee that he had not acted dishonestly in the past as well which went undetected. Even one act of dishonesty amounting to breach of faith may invite serious punishment."

In Federal Bank Employees Union, Aluva v. Federal Bank of India, Aluva & Ors., 2008 LLR 758 on consideration of various judgment of Hon'ble the Apex Court observation made by the Division Bench of Hon'ble Kerala High Court are relevant which can be quoted as below:

"6. ..... Labour Courts and Industrial Tribunals cannot act as a benevolent dictator and grant relief indiscriminately. Misplaced sympathy to wrong doers may do more harm to the industries. Industrial peace, harmony, power of the management to run the establishment etc., cannot be forgotten by the Tribunals or Labour Courts....."

13. In view of above, it is clear that there is no scope of enquiry by the Industrial Tribunal into merit of the case. Once the departmental enquiry is held to be legal, valid and proper, the only scope left for the Tribunal is to examine or reappraise the action of management on the point of punishment. It is also clear that act of theft whether small or big is a serious matter which affects industrial environment. So, it should not be taken lightly and punishment awarded by the management should not be interfered with.

14. Next limb of argument of the learned counsel for the workman is that the disciplinary authority was not competent to pass order of dismissal against the concerned workman. He has submitted that the Director (Personnel) who passed the order of dismissal was not the disciplinary authority of the concerned workman. He was much higher officer than the disciplinary authority. Therefore, the concerned workman was deprived of his right to appeal against the order of dismissal. He has relied on Air India Ltd. v. Sashikala Jarav (Ms.) & Anr., 2005-II-LLJ 21. Learned counsel for the management has contended that it was the responsibility of the workman concerned to disclose in his statement of claim as to who was his appointing authority or disciplinary authority, but the workman concerned have said nothing in his statement of claim. Therefore, above contention of learned counsel for the workman is not tenable. Contrary to it, learned counsel for the workman relying on Jashpal Kaur Cheema & Anr. V. M/s. Industrial Trade Links & Ors., AIR 2017 SC 3995 has contended that there is no specific denial of the pleading in which workman concerned has stated that a letter dated 16th April, 1994 addressed to Director (Personnel), marked Ext. 2 questioning the authority of the Director (Personnel) was sent by him.

15. Though there is nothing either in pleadings of the parties or in standing orders of the company on the point as to who was the appointing or disciplinary authority of the workman concerned, but is admitted case of the company that the Director (Personnel) was much higher in hierarchy of the officers. While deciding the representation of the concerned workman dated 28th March, 1994 it has been specifically mentioned in paragraph (f) of order passed by the management on 4th April, 1994 General Manger (Personnel) was stated to be appointing as well as disciplinary authority. Thus it is admitted case of the company that in case of workman concerned, General Manager (Personnel) was disciplinary authority, but the order of punishment was passed by much higher officer to the General Manager (Personnel).

16. Learned counsel for the management relying on Balbir Chand v. Food Corporation of India, CDJ 1996 SC 354 has submitted that where disciplinary action has been taken by officer higher in rank to the disciplinary authority, the action cannot be said to be bad in eye of law. There is no prohibition in law that higher authority should not impose penalty. But the facts of this case are different from that of the instant case. In Balbir Chand (supra) it was a case of joint enquiry conducted against several delinquent officials and the highest in the hierarchy of the competent authorities who could take disciplinary action against them was the Managing Director of the Corporation. Hon'ble the Apex Court said that the Managing Director of the Corporation being the appellate authority should not in normal circumstances pass an order of punishment so as to enable the delinquent employee to avail the right of appeal. Hon'ble Court further held that it could not, however, be laid down as a rule of law that in all circumstances higher authority should consider and decide the case imposing penalty as primary authority under the rules. The case of Balbir Chand (supra) was considered at length by the Hon'ble Bombay High Court in Air India v. Sashikala (supra) and it was held that where the delinquent employee was deprived right to appeal, the punishment order cannot be sustainable in eye of law.

17. In the present case, the disciplinary authority was General Manager (Personnel) and Director (Personnel) was much higher in hierarchy of officers. The Director (Personnel) is stated to be the topmost authority in the company. Now, it could not be explained by the learned counsel for the management as to why the punishment order was passed by the authority much higher in rank to the disciplinary authority i.e., the General Manager (Personnel). By adopting this procedure by the company the workman concerned is certainly deprived of right to appeal against his termination order. In such circumstances, serious prejudice is likely to be caused to the workman concerned. Therefore, the Director (Personnel) cannot be said to be competent to pass order of punishment in the present case and consequently the order is *non est* in eye of law.

18. Learned counsel for the workman concerned has argued that where dismissal order is not sustainable in eye of law, subsequent effect would be reinstatement of the workman, but as admittedly the workman concerned has attained the age of superannuation, he is not entitled for reinstatement.

19. Next question is whether the concerned workman is entitled for back wages? Learned counsel for the workman concerned relying on Hindustan Tin Works Ltd. v. Its employees, 1978-II-LLJ 474 has pleaded for back wages. In above case law Hon'ble the Apex Court has held that ordinarily workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the forced idleness. This was normal rule and the party objecting to it must establish the circumstances necessitating departure. But the concept of granting back wages has undergone sea change. In the case of Allahabad Jal Sansthan v. Daya Shankar Rai, 2005 (5) SCC 124 the Hon'ble Apex Court has held

> *"…… Earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But, now with the passage of time it came to be realized that the industry is being compelled to pay the workman for a period during he had apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problem dogging industrial relation."*

In the case of Allahabad Jal Sansthan (supra) the respondent had not raised any plea in his written statement that he had been sitting idle or had not obtained any other employment in interregnum. On the question being raised by the employer for non-entitlement of back wages on this ground, the Hon'ble Apex Court observed as below:

> *"The learned counsel for the appellant, in our opinion, is correct in submitting that pleading to that effect in the written statement of the workman was necessary. Not only no such pleading was raised, even in his evidence the workman did not say that he was continued to remain unemployed."*

20. Thus, to claim back wages, it was necessary for the concerned workman to have pleaded in his statement of claim that he remained unemployed during the period of his dismissal and he should have also adduced evidence to that effect. But, there is no such pleading in the statement of claim of the workman concerned, nor there is any evidence on this point.

21. Hon'ble the Apex Court in a large number of judicial pronouncements has pointed that payment of compensation in place of direction to be reinstated in service in cases of this nature would sub-serve the ends of justice. In Ashok Kumar Sharma v. Oberio Flight Service, 2010 (1) SCC 142 there was wrongful dismissal, but back wages were allowed and simply compensation was granted. Following the decision of the Hon'ble Apex Court in Allahabad Jal Sansthan (supra) and Ashok Kumar Sharma (supra) and various other pronouncements of Hon'ble the Apex Court, Hon'ble Calcutta High Court in Trinath Sethi & Anr. V. Coal India Limited & Ors., CDJ 2012 Cal HC 1039 has held that back wages is not automatic when dismissal order is quashed. Relevant portion of the judgment having bearing on the question in issue may be quoted below:

> *"……. On analysis of the aforesaid judgment passed by the Apex Court following results emerge:*
>
> *(1) When the dismissal order is quashed and order of reinstatement is passed, order granting back wages is not automatic.*

(2) Grant of back wages is depended upon consideration of the pleading and the evidence adduced by the delinquent employee identifying the fact that he was not gainfully employed otherwise during the period of dismissal.

(3) That back wage concept will not be applied without satisfaction of the aforesaid point No. (2), but principle of damages and compensation to be considered and dealt with to grant relief if dismissal is mid abinio."

In P. Karupaiah (D) Thr. Lrs. V. General Manager, Thruuvallauvar Transport Corporation, CDJ 2018 SC 360 also Hon'ble the Supreme Court has laid down that the workman concerned must adduce evidence to claim back wages.

20. Thus from above discussion it is evident that burden lies on the workman concerned to adduce evidence that he was not gainfully employed during the period in question. Back wages is not automatic. However, damages and compensation may be considered in case of order of dismissal is quashed. In these circumstances, workman concerned is not entitled to back wages. However, as lump sum compensation of Rs.6,00,000/= (Rupees six lac only) may be awarded to him.

Awad is passed accordingly.

Dated, Kolkata,
The 6th August, 2018

Justice RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1293.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, बीएसएनएल के रायगंज एसएसए के प्रबंधन के संबंध में नियोक्ता एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 02/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.08.2018 को प्राप्त हुआ था।

[सं. एल-40011/70/2013-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st August, 2018

S.O. 1293.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 02/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the employers in relation to the Emplayers in relation to the Management of Rajgani SSA of BSNL and their workmen, which was received by the Central Government on 16.08.2018.

[No. L-40011/70/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 02 of 2014

Parties:

Employers in relation to the management of
Raiganj SSA of BSNL

A N D

Their workmen.

Present:

Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management	:	
On behalf of the Workmen	:	Mr. S. Mukherjee, Ld. Counsel with Mr. D. Sengupta, Ld. Counsel and Mr. S. Saha, Ld. Counsel

Dated: 9th August , 2018. Industry: Telecommunication.

AWARD

By Order No.L-40011/70/2013-IR(DU) dated 15.01.2014 and corrigendums of even number dated 27.03.2014 and 14.07.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> *"Whether demand of Raiganj S.S.A. BSNL Shilpa Sahayak Union to enlist 132 numbers of the workmen as per the list submitted at Exhibit-I, working under the Raiganj SSA of BSNL, in addition to the main list dated 09-09-03, for receiving better terms and conditions of service are legal and/or justified? If not, to what relief the union is entitled to?"*

2. The factual matrix of this case is that the workmen listed in list Exhibit-I of the order of reference were performing duties of various clerical and technical jobs such as attending customer grievances, marketing, office work, canteen work, WLL faulty telephone line maintenance, accounting works, cleaning and sweeping etc. They have been working under the employment of BSNL continuously and uninterruptedly with their counterparts listed as casual workmen. They were treated as unlisted casual workmen who as well as listed workmen were under direct control and command of the management and administration. The dispute arose while a set of casual workers numbering 186 were declared as listed casual workers in the year 1976 out of total 348 casual workers. Due to negligence of local BSNL management at Raiganj, names of concerned workmen given in the list, Exhibit-I could not be included in the list as the management did not provide the names of those workmen to the higher authority for enlistment. The workmen who were treated as listed workmen used to get Rs.10,000/= after enlistment while other workers under reference getting only Rs.2970/= as they were denied enlistment. This discriminatory policy of the management adopted against the unlisted casual workmen wherein they have been deprived from getting equal remuneration as being provided to their comparable set of workmen who were already treated as listed workmen. The demand of unlisted workmen for equal treatment was also accepted and forwarded by the local management to appropriate authority for regularization in the listed roll. The listed workmen through their union raised their written protest against the above discriminatory policy. Those 132 workmen as referred in the list Exhibit -1 have contended for their entitlement to get financial benefits including other consequential service benefits at par with other workmen who were enlisted and regularized in service with effect from 25th September, 2003 as listed casual workers.

3. Notices were issued but despite service of notice, the management of BSNL did not appear in the case and they also did not file written statement. Therefore, the case proceeded exparte.

4. In support of their case the union examined one witness, namely, Shri Sushanta Bhadra and filed photo copies of various documents which would be referred as and when required.

5. I have heard the learned counsel for the union. Learned counsel for the union relying on Jeevarathinam P.N. & Ors. v. Union of india & Anr., 2000-III-LLJ(Suppl) 525, State of Punjab v. Talwinder Singh & Ors., 2004-II-LLJ 1048, Uttar Pradesh Land Development Corporation & Anr. V. Mohd. Khursheed Anwar & Anr., (2010) 2 SCC (L&S) 513 and Surjit Singh & Ors. v. State of Punjab & Anr., 2003-I-LLJ 961 has contended that the workmen are serving in the same department and doing the same work as listed casual workmen, but due to non-enlistment, they are getting less pay than the listed workmen. Thus on the basis of principles of equal pay for equal work the learned counsel has claimed parity in pay.

6. From the material available on record it appears that there were 348 casual workers working in BSNL at Raiganj. It is claimed that all the casual workers were performing the same duties involving various kinds of clerical and technical jobs such as attending to customer grievance, mobile service, marketing, accounts works and cleaning and sweeping. All the casual workers were under the control of local management of BSNL. The dispute arose when out of 348 casual workers, 186 were enlisted as regular workmen. Rest of the workers could not be regularized due to negligence of the local authority of BSNL to provide names of unlisted casual workers to the higher authorities. Above unlisted workmen were left out without any criteria and reason resulting in disparity in pay. The listed workmen are getting Rs.10,000/= a month after their enlistment whereas the unlisted workmen under reference are getting remuneration of Rs.2970/=.

7. The management of BSNL did not appear in the case to answer this disparity and to explain on what grounds 186 workers were listed and rest workers were left out. Evidence has been given by the workers under reference that they are doing same duties as their counterparts are doing.

8. Equal pay for equal work has been accepted as constitutional goal capable of being achieved through constitutional remedies. Where workers under reference were doing same work as their counterparts, there is no reason to deny the same pay. Hon'ble Supreme Court in Jeevarathinam P.N. & Ors. v. Union of india & Anr. (supra) has held that once it is found that the workers were doing same work as full-fledged workers, on the ground of equal pay for equal work, they are entitled to higher salary made available to their counterparts. In State of Punjab v. Talwinder Singh (supra) claim of daily wagers for parity of pay scale with those on regular basis was allowed on the principle of equal pay for equal work.

9. Thus applying the principles of equal pay for equal work the workers under reference are certainly entitled for the same pay as their counterparts are getting. They have been left out from regularization without their fault. The management has also recognized that they are doing same duties and there was no criteria for enlistment, as it is evident from document Exhibit W-01, a letter written by local management to head office.

10. In these circumstances, demand of Raiganj S.S.A. BSNL Shilpa Sahayak Union to enlist 132 numbers of the workmen as per the list submitted at Exhibit-I, working under the Raiganj SSA of BSNL, in addition to the main list dated 09-09-03, for receiving better terms and conditions of service are legal and justified. These workmen are entitled to get the same pay and benefits as available to the enlisted casual workmen.

Award is passed accordingly.

Dated, Kolkata,
The 9th August, 2018

Justice RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1294.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 99/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/18/2013-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st August, 2018

S.O. 1294.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 21.08.2018.

[No. L-12012/18/2013-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, DWARKA COURTS COMPLEX : NEW DELHI

ID No. 99/2013

Vicky
S/o. Shri Jagdish,
Through Nagar Nigm Karamchari Sangh,
Delhi Pradesh,
P-2/624, Sultanpuri,
Delhi …Workman

Versus

1. The Management of State Bank of India,
   Through its Regional Manager,
   Super Circle Excellence, 4th Floor,
   Zonal Office, Parliament Street,
   New Delhi
2. The Branch Manager,
   State Bank of India,
   East Patel Nagar,
   New Delhi …Management

AWARD

In the present case, matter was referred to this Tribunal vide letter No. L-12012/12/18/2013-IR(B-1) dated 04.06.2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the management of State Bank of India in terminating the workman Shri Vicky s/o. Shri Jagdish w.e.f. 20.10.2011 is legal and justified ? If not, what relief the workman is entitled to. ?

2. Both parties were put to notice and the claimant. Mr. Vicky filed statement of claim, with the averments that he was working as a regular daily wage sweeper cum messenger with the Management since 24/8/2008 without any break in service with fully honesty. He gave no chance of any complaint but unfortunately the services of the claimant were terminated from 20/10/2011 without any reason and without any show cause notice or passing any speaking order by the Management, which act is illegal and against the principle of natural justice. Even the management has not conducted any domestic enquiry prior to his termination, nor complied with the provisions of Section 25(f), (g) and (h) of the Act. The claimant sent legal notice but the Management failed to respond the same. It is stated that termination of the claimant from his services is totally illegal. He is still unemployed inspite of his best efforts to get a job. He has prayed for reinstatement on the same post with continuity of service and full back wages cum consequential benefits.

2. The claim petition has been resisted by the Management who filed its written statement wherein preliminary objection has been taken that there never existed any employer employee relationship between the Management and claimant. The claimant has never worked for continuous 240 days in the year preceding to his purported termination. There is no post of regular daily wage sweeper cum messenger with the Management and as such question of claimant working on the sad post since 20/8/2008 does not arise. It is alleged that since no person by the name of Vicky ever worked or was employed with SBI, East Patel Nagar Branch, no question of his alleged termination from services arises. Prayer has been made for deciding the reference in favour of the Management.

3. The claimant/workman filed rejoinder wherein he denied all the allegations made by the Management and reiterated his own case as set up in the claim petition.

4. On the pleadings of the parties, following issues were framed on 23/03/2015 :-

(1) Whether there existed relationship of employer/employee between the claimant and the management as alleged ?

(2) As in terms of reference.

5. The Claimant in support of his case examined himself as W.W.1 and tendered his affidavit Ex.WW1/A and relied on documents Ex.WW1/1 to WW1/12.

6. On the other hand, the Management did not adduce any evidence to rebut the case of the claimant, and opted the course not to participate in the proceedings and hence, the matter was proceeded ex parte against the Management vide order dated 15/1/2018.

Issue No.1 :-

7. It is clear from the averments made in the statement of claim as well as affidavit Ex.WW1/A that the claimant was engaged by the Management bank for the post of sweeper cum messenger, for which no appointment letter was issued. The claimant/workman has clearly stated that he worked for more than 240 days in a calendar year ad initially he was paid salary by way of cheque and later on, salary used to be credited in his bank account. He has also deposed that his services were terminated in the last week of October, 2011. However, no termination letter was issued to him. Shri Mahesh Chandra was the Branch Manager and one Shri Ashish was the Regional Manager at the time of his termination. The claimant has filed voluminous documents on record i.e. receipts of cheques as Ex.WW1/1 (colly.), receipt of vouchers as Ex.WW1/2 as well as copy of his passbook, which show that the claimant was receiving wages from the bank through cheques/vouchers, Perusal of various entries in the passbook of the claimant show that every month, wages/salary used to be credited in the account of the claimant. Moreover, it is clear from the bank vouchers Ex.WW1/1 that claimant Vicky was paid wages ranging from Rs.2500 to Rs.2620/- every month. Perusal of receipt Ex.WW1/1 shows that the claimant was doing the work of cleaning of bank premises and he was paid Rs.800/- to Rs.900/- after every 10 days and such receipts starting for the period 20-8-2008 to 30-8-2008, upto 1-9-2011 to 9-9-2011. Perusal of such receipts shows that the same are signed by the officials of the bank.

8. The claimant has also filed Credit Vouchers of the SBI as Ex.WW1/5 which show that various payments were made to the claimant by the Management bank from time to time. Name of the claimant also finds mentioned at various places in those vouchers. There is also bank letter Ex.WW1/6 vide which claimant was authorized on behalf of the bank to collect digital signature key. This is clearly suggestive of the fact that claimant Vicky was doing work in the Management Bank and that plea of the Management that there is no relationship of employee-employer between the Management and claimant, is totally false and baseless.

9. There is another aspect of the matter which can not be ignored. On behalf of the Management none has appeared to controvert the voluminous documentary evidence adduced by the claimant. The claimant has proved various receipts, which show that he was getting cleaning charges every month from the Management Bank. It is expected of the Management to examine some official of the bank so as to controvert the stand of the claimant. But no evidence was adduced on behalf of the Management. The law is fairly settled that if a party to a case does not enter the witness box or examine any other witness in support of the stand taken in the respective pleadings, in that eventuality this Tribunal is bound to draw adverse inference against the said party. The plea of the Management that no person by the name of

Vicky ever worked or was employed with SBI, East Patel Nagar Branch, stands belied on the face of documentary evidence Ex.WW1/1 to Ex.WW1/10 proved on record by the claimant.

10. In view of the above discussion, it is thus clear that there is relationship of employer and employee between the Management and claimant. This issue is decided accordingly in favour of the claimant and against the Management.

Issue No.2 :-

11. A vital question for consideration before this Tribunal is whether action of the Management in terminating the services of the workman w.e.f. 20/10/2011 is in accordance with law or in violation of the provisions of Section 25-F of the Act.

12. Testimony of the claimant that he worked on the post of regular daily wage sweeper cum messenger with the Management since 20/8/2008 without any break in service has gone unchallenged and unrebutted. It is the stand of the Management that no person by the name of Vicky ever worked with them but the Management failed to prove the same. While giving findings on issue No.1, this Tribunal on the basis of voluminous documentary adduced on record by the claimant has held that there existed relationship of employee and employer between the claimant and Management. The claimant in his testimony has deposed that he protested and asked the reason on the basis of which the Management had terminated his services but the officials of the Management did not bother to speak any word upon his query. His testimony that prior to his termination, the Management neither gave any notice nor any charge sheet nor conducted any domestic inquiry has gone unrebutted and unassailed, as the Management has not adduced any evidence contrary thereto. The claimant has proved on record copy of the legal notice dated 3/1/2012, as Ex.WW1/11 which was sent to the Management bank vide Speed Post. Testimony of the claimant that the Management did not respond to the said notice has also gone unassailed. Even in his cross examination, he deposed that no letter of termination was issued to him. In his statement as well as cross examination, the claimant has categorically stated that he is not doing any regular job, though he works intermittently at different places and different offices, whereas his wife is a home maker.

13. As discussed above, it is proved that the claimant/workman was in regular service of the Management from 20/08/2008 till his termination on 20/10/2011. Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him, as such action of the Management in terminating the services of the workman/claimant is held to be illegal and void.

14. Management has not adduced any evidence to show that it has paid retrenchment compensation to the claimant in terms of the provisions of Section 25-F of the Act before or at the time of termination of the claimant. As such, termination of the claimant can not be held to be legal or justified.

15. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management Bank to be illegal and void under the law.

16. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that claimant was continuously in the employment of the Management since 20/8/2008. There is no show cause notice or memo issued to the claimant/workman by the Management prior to his termination on 20/10/2011. As discussed above, engagement of the claimant for doing intermittent nature of work and/or for cleaning the bank premises is duly proved on record on the basis of documentary evidence Ex.WW1/1 to Ex.WW1/10. This Tribunal can not lose sight of the fact that work of cleaning of the bank premises is of regular and perennial in nature. The Management bank has not adduced any evidence to show as to who was/were the person/s engaged in place of claimant after his termination from the job.

18. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

> "The propositions which can be culled out from the aforementioned judgments are :
>
> (i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
>
> (ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

19. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

20. A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

21. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

> "8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.*** *A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calander year."*

27. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

> "The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under :-

> "In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any

deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.

Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

22. Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post, with 50 per cent back wages, iinasmuch as termination of the claimant/workman is per-se illegal, particularly when the job is of regular and perennial nature and the claimant/workman is not gainfully employed anywhere since after his termination by the Management. Award is passed accordingly.

Let copy of this Award be sent for publication as required under Section 17 of the Act.

Dated:-19.07.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1295.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 18/2015-16) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/68/2015-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st August, 2018

S.O. 1295.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2015-16) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 21.08.2018.

[No. L-12012/68/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/18/2015-16

Date: 25.07.2018

Party No.1 : The Branch Manager,
State Bank of India,
Lakhanwada Branch,
Tehsil : Khamgaon,
Distt. Buldhana (M.S.) – 444303

Versus

Party No.2 : Shri Shantaram Baburao Pandhare,
R/o At & Post : Lakhanwada,
Tehsil : Khamgaon,
Distt. Buldhana (M.S.) – 444303

AWARD

(Dated: 25th July, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial

dispute between the employers, in relation to the management of State Bank of India and their workman, Shri Shantaram Baburao Pandhare, for adjudication, as per letter **No.L-12012/68/2015-IR (B-I) dated 21.08.2015,** with the following schedule:-

"Whether the action of the management of State Bank of India, Lakhanwada Branch, Distt. Buldhana in terminating the service of Shri Shantarama Baburao Pandhare and denying the claim of applicant for one month salary and reinstatement in service is just, fair & legal? If not, to what relief the workman is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Shantaram Baburao Pandhare, ("the workman" in short) filed the statement of claim and the management of State Bank of India, ("Party no.1" in short) filed the written statement.

3. The workman filed the statement of claim by asserting that, he was appointed initially as a Peon in bank at Lakhanwada branch on 06.12.2010. He worked of sweeping, cleaning, bringing cash from Khamgaon, dak and dispatch duty, table and chair cleaning, looking after the work of record room, going to another bank for clearing cheque etc. According to him, he was required to work from 9.00 a.m. to 6.00 p.m.

4. According to the workman, he was paid Rs. 100/- per day as wages initially. After that, his wage was enhanced from Rs. 100/- to Rs. 125/- per day. According to him, management terminated his services on 21.12.2013 orally. Lastly he was paid Rs. 150/- per day. His services continued from 06.12.2010 to 21.12.2013 i.e. he had completed more than 240 days continuous service in each calendar year. So, he acquired the status of permanent employee.

5. According to the workman, after termination of his services, he requested to the management for reinstate, but his prayer remained in vain, so he approached to the ALC & Labour Ministry for reference. So, this reference has been made up. According to the workman, he is out of employment and he is not in any gainful employment. He also asserted that, his orally termination is illegal and he is entitled to reinstate with full back wages and continuity in service.

6. Party No. 1 filed its written statement by denying all material facts asserted in the statement of claim. According to the management, workman does not come in definition of/meaning of the above Act. According to the management, workman was not initially appointed as in the capacity of Peon, he worked only as a casual worker for a short time. His appointment was never on any sanctioned post, but looking to the exigency and need, he was engaged on daily wages by the Branch Manager, who has no authority to appoint any person on permanent basis.

7. Party No. 1 denied that, the workman was engaged for all work of peon. It is not correct to say that, workman worked of sweeping and cleaning etc as mentioned in the statement of claim. It is also denied that, he was looking after the work of Record Room, going to another bank for clearing of the cheque and going for the recovery of the loans. It is also denied that, he required working 9.00 a.m. to 6.00 p.m. According to the management, he was doing mainly sweeping and cleaning and working for 8 hours only.

8. According to the management, workman filed some documents, which he obtained from illegal channel. It is also denied that, looking to his work, his wages were increased. According to the management, termination of services is irrelevant. He did not work in regular nature. It is also denied that, he completed 240 days in each calendar year and acquired the status of permanent employee. According to the management, it is not correct to say that, in place of workman, one other person, Shri Ajay Khachare was engaged in bank. It is also denied that, the workman was not gainfully employed. According to the management, his appointment was illegal without following the process. So, he is not entitled to any relief.

9. **Points of determination**

(i) Whether the action of the management of State Bank of India in terminating the services of the workman w.e.f. 21.12.2013 is legal?

(ii) Whether the action of the management denying the claim of the workman for one month salary is just, fair & legal?

(iii) Whether the workman is entitled for reinstatement in service?

(iv) Whether the workman is entitled required relieves?

Reasons of determination

10. On behalf of the workman, he filed case laws:- State of U.P. & Anr. Vs. Presiding Officer 2018 I CLR 156 (High Court of Uttarakhand), Rajkumar Dixit Vs. Vijay Kumar Gauri Shankar 2015 II CLR 573, Surendra Kumar Verma Vs. CGIT (1980) 4 SCC 443, Deepal Surwase Vs Kranti Adhyapak Mahavidyalaya 2014 II CLR 813 (S.C.) and Desh Raj Vs. Divisional Engr. Telecom 2017 III CLR 311, in which, following principles are laid down:-

i. If the termination order passed against the workman if fond illegal and set aside, the relief of reinstatement in service of the workman, is the normal rule, but it may not be so in every case ……., is to be moulded on examining the facts in a particular case.

ii. Hon'ble Supreme Court held that, "High Court cannot exercise its supervisory jurisdiction and act as original Court or appellate court to set aside the finding of fact recorded on the points of dispute……..pleadings and evidence on record".

iii. Once it is established that the daily wager had served continuously for 240 days in the preceding year, termination of his service, without compliance of the provisions of I.D. Act, 1947, is illegal and invalid in the eye of law.

iv. Tribunal has to lift the veil and find out the basic facts, as to whether the establishment is an industry and the employee is a workman or not.

v. It is the employer who has to plead and prove that during the intervening period, the workman was gainfully employed and hence he is not entitled to back wages.

vi. Claim by the workman …… for dues, is in the nature of execution proceedings which is based on the settled wages and claim which are generally granted.

11. On the contrary management relief on case laws:- B.C. Ramkrishna Vs. State 2003 LIC 1014 (Karnataka), Dr. Mrs. Chanchal Goyal Vs. State of Raj 2003 LIC 1141 (SC), Ashiwani Kumar vs. State of Bihar 1997 LIC 578 (SC), M.P. State Agro Vs. S.C. Pande 2006 SCC(L&S) 434, Delhi Development Vs. Delhi Administration 1992 SCC(L&S) 805, Secretary State of Karnataka Vs. Umadevi 2006 SCC(L7S) 753, State of Karnataka Vs. G.V. Chandrashekhar 2009 I SCC(L&S) 834, Vice chancellor Lucknow Vs. Akhilesh Kumar 2016 I SCC(L&S) 186 and Talwara Cooperative Vs. Sushil Kumar 2008 2 SCC(L&S) 931, in which, following principles are laid down:-

i. Held, "The challenge to the order of dismissal passed against the petitioner on the ground of long continuance as ad hoc/temporary employee would not be tenable …….mere continuance does not imply such waiver……no waiver which would be against requisite compliances can be countenanced".

ii. Held, "Right to regularisation, if any, on completion of 240 days' continuous service……..by itself would not confer any legal right upon him to be regularized in service".

iii. "Absorption, regularisation, or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees appointed/recruited dehors the constitutional scheme of public directions amount to creating another mode of public appointment, which is not permissible"

iv. It is also held that, in para 54 in the case of 2006 SCC(L&S) 753, it is also held that, "Those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents".

v. Ad hoc appointments continuing for a long time, reiterated, cannot be ordered to be regularized.

vi. Daily wager, considering that, respondent was out of employment for more than 20 years and could not seek regular appointment elsewhere due to over age, compensation of 4 lacs directed to pay to each respondent.

I relied all principles laid down in the above case laws. Now, I want to discuss factual argument of the workman first.

12. On behalf of the workman, it was argued that, the workman was appointed initially in the capacity of peon on temporary basis; he worked in bank like sweeping, cleaning on regular basis, but management terminated his services orally. According to him, it was illegal and liable to be quashed, but workman in his court statement admitted that, he did not apply for this post. No written or oral examination/test was passed by him, no advertisement for this post was held. On reading his statement, it was concluded that, his appointment was on the basis of mercy of branch manager, but management clarified the fact that, he was causal worker, who was appointed looking into the exigency and need of the bank work. According to the management, his appointment was not in clear vacancy. They also argued that, there are Recruitment Rules in bank, which were not followed. So, according to the management, workman was not regularized.

13. According to the workman, he relied on documents W-1 to W-16, which shows that, his appointment was regular and on clear vacancy, but workman in his court statement, admitted that, he worked even on Sunday. Bank did not pay the wages of Sunday. Bank remained closed on Sunday. He also denied that, bank keeps daily wagers as per requirement and nature of work. He also admitted that, document W-17 is not concerned with him, because it is not written or signed by him. According to the management, this document is incomplete. He also admitted in para no. 12 that, he did not file any bank paper, which shows that, his appointment was regular. On the contrary, management through Exhibit M-1, bylaws, which shows Recruitment Rules of the employees working under the bank. It shows that, no bank procedure was followed in appointment of the workman.

14. According to the workman, it was argued that, he asked some documents through court as copy of muster roll, copy of the vouchers and other documents, which were not produced by the management, so adverse inference can be

drawn against the management. On the contrary, in reply, it was argued that, above documents were not supplied to the workman, because he is casual labour and no report is maintained by the bank.

15. On behalf of the workman, it was also argued that, in regard to criminal case, bank authority wrote a letter to the District Supdtt. of Police and Asstt. General Manager, Buldhana, which shows that, he was a canteen boy i.e. regular employee of the bank, because this incident happened at the time, when the workman went with Branch Manager at bus stand and police complaint was also lodged by the Branch Manager. On the contrary, bank replied that, no canteen is run by the bank in their rural branch and Branch Manager's letter does not show the regular employment of the workman. Ongoing this fact, it reveals that, workman had good relation with the bank authority, but documents and evidence shows that, he was only causal worker.

16. According to the workman, he was not in gainful employment after the termination of his service by the bank. This fact is denied by the management. Workman in para 16 of his court statement, admitted that, he was doing labour job, but he did not get pay regularly. According to him, such type of job was 10 to 15 days in a month. It shows that, he had some short of employment.

17. On behalf of the workman, para 6 in evidence on affidavit, he asserted that, bank engaged the service of fresh hand of Mr. Ajay in his place on daily wages. According to him, this is ultra violation of the above act, but in para 17 of his cross-examination, he denied that fact. He asserted that, "It is not correct to say that, after my termination, Ajay Kachare is working continuously in my place".

18. On behalf of the management, Mr. Satish K. Raut was examined in support of defence of management, which was taken in written statement. According to him, some antisocial elements attacked on workman, which has no relation with the bank job. He also asserted that, workman did not complete 240 days of continuous service in preceding 12 months before his disengagement. According to him, he was not regular peon. Bank never issued appointment letter in his favour. He also asserted that, in rural branch, there was no clearance of cheque. Payment of casual workers is made at the end of work, so bank did not pay on monthly basis. He was also not aware about the rate of wages, FIR, letter to the Asstt. General Manager. According to him, he gave court statement on the basis of documents. After reading his court statement, nothing is shown that, he was prejudiced to the workman or he had any other interest, so statement appears to be true.

19. Judging the present case in hand with the touch stone of principles as mentioned above, as I observed that, appointment of workman was not followed by due process as per bank rules mentioned in Exhibit M-1. Documents W-1 to W-17 filed by the workman does not show that, he was a regular employee of the bank. It also shows that, when workman approached to the bank authority about his termination, bank authority advised to the workman to prefer an appeal, but it shows that, he was casual labour and his service was terminated without paying any compensation. So, he may entitle 10,000/- (Rupees ten thousand only) as a compensation in lieu of reinstatement with back wages and regularization of the service. Hence, it is ordered:-

ORDER

The action of the management of State Bank of India, Lakhanwada Branch, Distt. Buldhana in terminating the service of Shri Shantarama Baburao Pandhare and denying the claim of applicant for one month salary and reinstatement in service is just, fair & legal, but the workman is entitled for lumpsum compensation of Rs. 10,000/- (Rupees ten thousand only) from Party No.1 in lieu of reinstatement with back wages and regularization of the service, which is payable within one month from the publication of this award in official gazette, failing which, the amount due to the workman will carry interest of 6% per annum from the date of due to the workman to the date of actual payment of the amount to the workman. The workman is not entitled for any other relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1296.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ग्रामीण बैंक ऑफ आर्यवर्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 63/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.08.2018 को प्राप्त हुआ था।

[सं. एल-12011/29/2014-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st August, 2018

S.O. 1296.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2014) of the Central Government Industrial Tribunal-cum-Labour

Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Gramin Bank of Aryavart and their workmen, received by the Central Government on 21.08.2018.

[No. L-12011/29/2014-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 63 of 2014

Between :

Shri R P Singh,
State Executive Committee Member,
U.P Bank Workers' Organization,
3/13, Mathura Nagar,
Aligarh(U.P)-202001.

And

1. The Chairman,
   Gramin Bank of Aryavart,
   Head Office,
   A-2/46, Vijay Khand, Gomti Nagar,
   Lucknow-226010.

2. The Regional Manager,
   Gramin Bank of Aryavart,
   Regional Office,
   Aligarh Road,
   Hathras (UP).

3. The Branch Manager,
   Gramin Bank of Aryavart,
   Village & Post Eihan,
   Distt. Hathras(U.P).

AWARD

1. Central Government, MOL, vide notification no. L-12011/29/2014-IR (B-I) dated 29.05.2014 has referred the following Industrial Dispute to this Tribunal for adjudication.

2. "Whether the claim of the union regarding non-regularizing the service of Shri Ramendra Singh on the post of Office Attendant by the management of Gramin Bank of Aryavart w.e.f 12.03.2012 is just fair & legal? If not, to what relief the workman concerned is entitled to?"

3. The case of union on the behalf of workman Ramendra Singh is that he was appointed by the Branch Manager of Ahan Branch district Aligarh with the prior permission of Senior Officer of the Bank on 1.09.2005 as part time Safai Karmchari on regular basis. He was being paid regular wages and bonus. In the month of March 2011 regular messenger was transferred to some other branch and in his place no one was appointed. With the permission of senior officers of the bank branch manager started taking work from the workman as messenger. It is also alleged that the worker worked as messenger against clear and permanent vacancy and thus is entitled to become regular and permanent employee of the Bank. Thus it is prayed that worker be declared regular and permanent Employee of the Bank.

4. Management filed written statement alleging that the reference is not liable to be decided by this Tribunal. The appointments and promotions in the respondent Bank are made as per Government of India guidelines and prevailing rules in the Bank. It is denied by the Bank that the worker had ever been appointed on any substantive post of Office attendant. For sweeping and cleaning the branch the local persons are engaged as casual labor by the Branch Manager in their personal capacity on need basis and as per requirement of the Branch on availability of persons. In the absence of Office Attendant of the Branch due to leave etc. Branch manager engage different persons on different occasions and payment was made to them by the Branch Manager who used to reimburse the same from the Branch. Worker was engaged as casual labor on emergent need of work on day to day basis for which charges has been paid to the worker. Bank had never paid salary to the worker. There was no relationship of employer and employee between the Bank and the worker Sri Ramendra Singh who had never been in the roles

of the Bank. Worker had never marked his attendance in the attendance register. Worker did not hold any regular and permanent post in the Bank, he was never issued any appointment letter and had never worked continuously in the Bank and had not completed 240 days during the period of 12 calendar months. His engagement was on day to day basis which came to an end at the end of the day. He is not entitled to get any benefit like regular and permanent employee of the Bank. The applicant Ramendra Singh is trying to gain back door entry in the Bank by way of present litigation. The statement of claim filled by the alleged union is wholly bad in law and liable to be rejected.

5. Union has filled 7 documents through paper no. 6/1.

6. Union has also filed rejoinder statement but nothing new has been stated therein. Management per list dated 11.12.2015. Whereas worker Ramendra Singh has examined himself as WW1 supporting his case by way of filing his evidence on affidavit. Contrary to it management has examined Sri Anil Kumar Aggarwal as MW1 in support of their case.

7. Union has also filed statement of Bank Account in the shape of pass book vide application dated 30.05.16 showing that some amount were deposited in the account of worker. Bank has also filed the statement of account showing that coolie charges were paid by the Bank during the period 1.04.12 to 31.03.13 in account no. 701361028050038 which account admittedly is not in the name of worker.

8. I have heard the argument of the both sides and perused the record carefully.

9. Worker Ramender Singh in his cross examination has deposed that he was appointed as Safai Karamchari and was not appointed as office attendant. He admitted that no appointment letter was given to him. He was paid his wages as daily wager. No attendance was recorded by the Bank. Worker has further deposed it is wrong to suggest that he had not worked for 240 days continuously and he cannot state whether he ever raised demand for his regularization and whatever amount was paid was paid to him through vouchers.

10. MW1 Shri Anil Kumar Aggrawal in his cross examination has stated that in the Bank there is no existence of casual worker and casual worker are paid their salary on day today basis but worker was his wages on weekly basis. Witness has admitted the fact that paper no. 12/5 is the circular of the Bank which provide that workers engaged for scavenging work be paid wages on monthly basis. Witness has shown his ignorance with regard to implementation of circular dated 14.06.12 as he was not working in the branch at relevant period. Witness has further stated that it is not in his knowledge that whether worker was paid his wages on weekly basis or on monthly basis. Whenever manager was on leave he took the work of messenger from the worker and on completion of work he was paid. After seeing paper no. 12/2 witness has stated that he cannot say whether the passbook of the worker or not and the amount which was deposited on 31.10.12 was coolie charges.

11. Therefore after considering the evidence of both parties it is established beyond doubt that worker was working in the Bank as daily wager and from the evidence of the worker it is also established he had not completed 240 days of continuous work in the Bank. Worker in his evidence clearly admitted that he was engaged in the Bank as Safai karmchari and he was paid his wages on day today basis therefore from his evidence it is very much clear he was never appointed in the Bank as part time Safai Karamchari on 9.01.2005 as pleaded by him in his claim petition and it is further clear that the worker was never appointed against any clear vacancy in the branch on the post of office assistant.

12. It is pertinent to mention here that the evidence adduced by the worker is completely inconsistent to the pleadings raised in the claim petition.

13. The evidence of management witness fully support the pleading raised by the management in their written statement. Witness has also stated in his cross examination that worker has not completed 240 days continuously in a calendar year. Paper no. 15/2 is the statement of account for the period 01.04.12 to 31.03.12 wherein it has been shown that coolie charges were paid by the bank during this period in account no. 701361028050038. By a way of perusal of this document it is not at all clear that this statement of account pertains to the worker. Therefore paper no. 15/2 is of no help to the Bank.

14. Worker Ramendra Singh has filed photocopy of his passbook but this documents has not been proved by the worker in his evidence. As such this document is of no help to the case of the worker.

15. Worker has from over all appreciation of evidence of parties oral as well as documentary it is established that union has palpably failed to prove that worker was ever appointed as messenger in the bank rather from the evidence of the parties it is clear that the worker was appointed as daily wager to clean the branch premises. Worker has also failed to prove the fact that he worked continuously for 240 days.

16. From the reference order it is very much clear that reference is with regard to non regularizing the services of Sri Ramendra Singh on the post of office attendant by the management w.e.f 12.03.2012. It is settled legal position that it does not fall within domain of courts to consider the claim of regularization in service. As worker was

admittedly daily wager in the Bank therefore no claim regarding regularization of worker on the post of Office Attendant can be raised by the union on behalf of worker.

17. Here it should also be made clear that the entire evidence adduced by the worker is against the terms of reference order.

18. The Hon'ble Supreme Court in the case of state of MP and others versus Lalit Kumar Verma cited as 2007(112) FLR 345 has held **Daily Wage- Respondent was appointed on daily wages- Not in terms of statutory rules- Not on clear vacancy – Working on daily wages alone- Would not be entitled to status of permanent employee-Could not be directed to be regularized.**

19. In view of the discussions made above it is clear that the union has completely failed to prove the case on behalf of the worker, therefore, it is held that neither the union nor the worker Sri Ramendra Singh can be held entitled for the relief claimed, hence reference is decided against the worker and in favor of the management.

20. Reference is answered accordingly.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1297.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ग्रामीण बैंक ऑफ आर्यवर्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 32/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.08.2018 को प्राप्त हुआ था।

[सं. एल-12011/34/2015-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st August, 2018

S.O. 1297.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Gramin Bank of Aryavart and their workmen, received by the Central Government on 21.08.2018.

[No. L-12011/34/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 32 of 2015

Between :

The Member,
State Working Committee of UP Bank Workers Organisation,
3/13, Mathura Nagar,
Aligarh(U.P.)-202001.

And

The Chairman,
Gramin Bank of Aryavart,
A-2/46, Vijay Khand, Gomti Nagar,
Lucknow-226010.

AWARD

1. Central Gov, MOL, vide notification no. L-12011/34/2015- IR (B-I) dated 23.06.2015 has referred the following Industrial Dispute to this Tribunal for adjudication.

2. "Whether the action of the management of Chairman, Gramin Bank of Aryavart, Lucknow in changing service condition by way of changing the payment method from monthly to daily in respect of part time sweepers posted in various branches of the Bank, without obtaining permission from the competent authority and without any settlement with the workmen/Union / Federation operating the Bank Industry is just and legal? And if not, what relief the concerned workmen are entitled to?"

3. The case of the Union in short is that in all the branches of the then Shreyas Gamin Bank (now known as Gramin Bank of Aryavart) for scavenging work members of the union were working as part time safai karamchari continuously and regularly and all of them were used to be paid their monthly remuneration by the Chairman of the Bank. These workers were also paid bonus as per rules regularly. It is further pleaded that after the amalgamation of Shreyas Gramin Bank in Gramin Bank of Aryavart also paid monthly wages and bonus to the workers. The authorities of the bank out of prejudice deliberately make material change in the service conditions available to these workers started making payment of their salary and allowances on daily rate basis instead of monthly wages.

4. The union on the basis of above has prayed that the action of the management is an unfair labor practice and the workers are entitled to be paid their wages on monthly basis instead of daily rate basis and a direction to this effect be issued to the bank authorities so as to enable them to receive their wages on monthly basis.

5. The management filed written statement in which it is submitted that the remuneration of staff of the bank is to be determined by Central Government under section 17(i) of the Regional Rural Gramin Bank Act, 1976. The Regional Rural Bank are guided by the directions issued by Central Government from time to time in terms of section 24 of the RRB Act, 1976. The Branch Managers of Regional Rural Banks engages local casual laborers for part time sweeper for cleaning work of the branch. It is further submitted that branches may engage coolie (casual labor) whenever the office attendant of the branch is on leave or outstation duty or not posted at the branch which is a stop gap arrangement and branches engage differed persons on different occasions and payment to such casual laborers are made through contingency funds of the branches. It is admitted by the bank that the then Chairman of Shreyas Gramin Bank Head Office, Aligarh had issued circular dated 14.06.12 wherein charges were fixed for work of sweeping/cleaning in the branches on monthly basis. After amalgamation of Shreyas Gramin Bank with Gramin Bank of Aryavart, the General Manager of the bank issued circular dated 06.02.14 to all its branches showing similarity and fairness]in seeping / cleaning charges of the part time sweepers in all the branches of the bank. As per above said circular only the mode of payment of sweeping/cleaning charges to the casual labor is changed by the management of the bank i.e. daily basis in which charges for sweeping the premises of the branch and office is increased. It is also submitted by the bank that the bank had changed the mode of payment of salary and not the service conditions applicable to these part time sweepers working in the branches. It is not within the authority of this hon'ble Tribunal to decide as to what wages are to be paid to the workers. The reference orders is bad in law being vague disputed and without jurisdiction and as such the present reference order is liable to be struck down on the aforesaid ground alone.

6. Union has also filed its rejoinder but therein nothing new has been narrated.

7. It is pertinent to mention here that after exchange of pleadings between the parties Union stopped attending the proceedings of the case and from the order sheet it is clear that neither the union nor its representative appeared in the case for the last several dates.

8. Again on 19.06.18, when the case was taken up for hearing none appeared from the side of the union but the representative for the management was present.

9. The union was debarred from adducing documentary as well as oral evidence as no documents have been filed by the union in support of its claim. Thereupon, the representative for the management also made a endorsement on the order sheet that they too do not want to file any evidence or to adduce evidence in the case.

10. Thus from the facts and circumstances it is abundantly clear that the union is not interested to prosecute its claim before the tribunal and it is further clear that it is a case of no evidence. Union has not been able to prove its case by adducing cogent and convincing evidence, therefore, the reference is bound to be answered against the union holding that the union is not entitled for any relief as claimed by it.

11. Accordingly reference is decided against the Union and in favor of the management.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1298.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल ब्लेंडिंग लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 26/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.08.2018 को प्राप्त हुआ था।

[सं. एल-30011/9/2010-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st August, 2018

S.O. 1298.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2010) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Blending Ltd. and other and their workman, which was received by the Central Government on 17.08.2018.

[No. L-30011/9/2010-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/26 of 2010

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

INDIAN OIL BLENDING LTD. [erstwhile]

Now: M/S. IOCL & 3 ORS.

1. The Indian Oil Blending Ltd. (erstwhile)
   Now known as IOCL, Indian Oil Bhavan,
   Bandra [E], Mumbai – 400 051.

2. The Chief Terminal Manager,
   Erstwhile M/s. Indian Oil Blending Ltd,
   Now known as IOCL, Pir Pau, Trombay,
   Mumbai – 400 074.

3. The Plant Manager,
   Erstwhile M/s. Indian Oil Blending Ltd,
   Now known as IOCL, D-100, TTC Indl. Area,
   Kukshit Village, Vashi
   Navi Mumbai – 400 705.

4. M/s. Popular Catering Services,
   A-1, Arihand Village,
   15th Road, Chembur,
   Mumbai – 400 074.

AND

THEIR WORKMEN

The Secretary General,
Petroleum Employees' Union,
Tel-Rasayan Bhavan, Tilak Road,
Dadar [E], Mumbai – 400 014.

APPEARANCES:

FOR THE EMPLOYER (1) : K. P. Anil Kumar, Advocate.

(2) : K. P. Anil Kumar, Advocate

(3) : K. P. Anil Kumar, Advocate.

(4) : No Appearance.

FOR THE WORKMEN : R. D. Bhat, Advocate.

Mumbai, dated the 6th July, 2018.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-30011/9/2010 – IR (M) dated 22.03.2010. The terms of reference given in the schedule are as follows :

> *"Whether the contract between the contractor M/s. Popular Catering Services, Mumbai and the management of erstwhile Indian Oil Blending Ltd. (now known as M/s. IOC Ltd.) is sham and bogus and is a camouflage to deprive the workmen namely (1) Shri Padamanabha Poojari and (2) Bhikahaji Mohite from the benefits available to permanent workers of erstwhile M/s. Indian Oil Blending Ltd. (now known as M/s. IOC Ltd.) ?"*

2. After the receipt of the reference, both the parties were served with the notices.

3. As per Roznama, it appears that the union is absent since long. The concerned workmen has not filed affidavit to substantiate the claim inspite of opportunities given to him. It appears therefore that the union has failed to substantiate the claim and therefore the Reference is liable to be rejected and accordingly the Reference is rejected.

ORDER

Reference is rejected.

Date: 06.07.2018

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1299.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 12/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.08.2018 को प्राप्त हुआ था।

[सं. एल-17011/10/2011-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st August, 2018

S.O. 1299.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2012) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and other and their workman, which was received by the Central Government on 17.08.2018.

[No. L-17011/10/2011-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/12 of 2012

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

LIFE INSURANCE CORPORATION OF INDIA

The Divisional Manager,
Life Insurance Corporation of India,
Divisional Office, Jeevan Bima Marg,
Churchgate
Mumbai – 400 020.

AND

THEIR WORKMEN

General Secretary,
Rashtriya Bima Karmachari Union,
New India Centre, 8th Floor,
17-A, Cooperage Road,
Mumbai – 400 039.

APPEARANCES:

FOR THE EMPLOYER : Mr. M. V. Damle, Advocate

FOR THE WORKMEN : Mr. M.B. Anchan, Advocate

Mumbai, dated the 18th July, 2018.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-17011/10/2011 – IR (M) dated 29.02.2012. The terms of reference given in the schedule are as follows :

> "Whether the action of the management of LIC of India, Mumbai, Division-1 in not giving promotion to Shri K. K. Relekar, Assistant to Higherer Grade Assistant and allowed to supersede by his juniors is legal and justified ? What relief the workman is entitled to ?"

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.

3. The second party workman has filed statement of claim Ex.12. According to the second party workman, he has joined the services of LIC, Mumbai as Record Assistant in 1970. On 14.1.73 he was forced to apply for the post of Peon instead of clerical. In 1973 he was called for interview. From 1.1.73 he was again appointed as Probationary Peon without appointment order. He was confirmed in the post of Peon from 2.5.74. In May '74 he had applied for the post of Record Clerk / Assistant for that he did not get any reply from the management. In 1975, one of the retired employee's daughter was appointed as Record Clerk as a special case excluding the claim of the concerned workman. Thereafter he had applied for the post of Record Clerk in 1975. However, he was not replied and he was not promoted as Head Peon / Record Clerk. His juniors were promoted as Head peons. He was not promoted as Head peon. In 1980 again his juniors were promoted as Record Clerks. In 1987 his juniors were promoted as Assistants without written test. After 15 years of service they were further promoted as Higher Grade Assistants without written test and after 5 years they became officers without examination or tests.

4. It is his case that he was promoted as Record Clerk in 1995, Assistant in 2000 and placed in contingency list and regularized in 2001. His juniors were promoted in 1987 as Assistants without written test and further as Higher Grade Assistants in 2002 and officer from 2007 without written test. As such the management should have exempted him from written test for the post of Higher Grade Assistant in 2010. However, he was asked to appear for the written test vide letter dt. 31.1.10. He could not attend the said examination as he received the said letter on the same day of test at 4.00 p.m. He is therefore entitled to promotion with arrears of pay & allowances from the date his juniors are promoted. As such the action of management in not giving the promotion to him as Higher Grade Assistant is not legal & proper.

5. By filing written statement Ex. 13 the first party LIC has resisted claim contending therein that the concerned workman applied for the post of Peon on 14.1.73 stating his qualification as SSC. He was called for the interview by the first party vide letter dt. 24.8.73 and was selected as a Peon. He joined the first party from 1.11.73 as a Peon for probation. He completed his probation and was confirmed by the first party on 2.5.74. Thereafter he was promoted as Record Clerk on 15.6.95 and further promoted as Assistant w.e.f. 25.6.2001 and confirmed in the said cadre w.e.f. 25.12.2001.

6. It is then contention of the first party that thereafter the second party workman applied for promotion to the cadre of Higher Grade Assistant in 2010 as per notification dt. 1.11.2010. He submitted a letter dt. 27.12.2010 stating that he has passed Book-keeping & Arithmetic paper and has got more than 45% marks in principal and practice of Life Insurance papers in the year 1977 or 1978 and asked for exemption in written test. First party by letter dt. 31.12.10 informed him that he has not put the required service in Assistant cadre and therefore he is not eligible for exemption. He has eligible for promotion in test category. The said letter was duly acknowledged on 7.1.11. Written test for the promotion was held on 9.1.11 but the workman did not appear for written test. He was not fulfilling the norms of promotions by exemption as per LIC of India Class III and IV (Employees) Promotion Rules 1987 and was fulfilling the norms under test category for which he did not appear.

7. It is thus denied by the first party that letter dt. 31.12.10 was received by the workman on the same day of the test at 4.00 p.m. and therefore he could not attend the said examination. Even the issue of promotion in the year 1981, 1987, 2000 & 2007 was not challenged by the second party at the relevant time and same is reached finality. As per rules applicable for the promotion of the workman to Higher Grade Assistant he was not qualified for the promotion under exemption category and therefore the action of management in not giving promotion to him is legal & justified. It has thus sought the rejection of reference.

8. Following issues are framed at Ex.14. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the action of management of LIC of India in not giving promotion to Shri K.K. Relekar, Assistant to Higher Grade Assistant and allowed to be superseded by his juniors is legal and justified ?	Yes
2.	If not, what relief the workman is entitled to?	No
3.	What order ?	As per final order

REASONS

Issue No.1.

9. On going through the documents, it appears that the concerned workman has filed the application for the post of Sub-staff on 14.1.73. Admittedly, he was appointed as Peon on 14.1.73. It cannot be accepted that he was forced to apply for the post of Peon instead of clerical. The fact remains that he was selected for the post of Peon vide his application dt. 14.1.73 and thereafter he was promoted to the cadre of Record Clerk w.e.f. 15.6.75 and to the cadre of Assistant w.e.f. 25.6.2001. In his cross-examination the concerned workman has admitted that he even did not give any application to the management mentioning therein that he was forced to make an application for Peon and that his application for the post of Peon was obtained by the management forcibly. Obviously, therefore there is no evidence on record that since 1970 he was working on daily wages and he had to perform clerical work on the table in record section. There is no document showing that appointment to that post. As admittedly he has not been issued the appointment letter.

10. As seen earlier, the concerned workman was confirmed to the post of Peon on 2.5.74. Thereafter he was promoted as Record Clerk on 15.6.95 and confirmed on 16.12.95. He was then promoted as Assistant w.e.f. 25.6.2001 and confirmed in the said cadre. The question is whether he was eligible for promotion to the cadre of Higher Grade Assistant in 2010 as per notification dt. 1.11.2010 ?

11. In the context, it is contention of the concerned workman that in 2005 he had made an application for the post of Higher Grade Assistant but he did not get reply from the management. In 2006, first party management replied to his application for the promotion for Higher Grade Assistant stating that he was not eligible for the post of Higher Grade Assistant. So the question is as to what was the criteria to have eligibility for the post of Higher Grade Assistant as per the notification ?

12. As per notification for promotion in the year 2005 – 06, the conditions for eligibility including service, qualification was to be reckoned as on 1.12.2005. That time the workman has applied for promotion to the Higher Grade Assistant vide his application dt. 2.1.06 and he was informed by the management that he was not found eligible for the promotion on Higher Grade Assistant. It is therefore necessary to refer the rules in the matter of promotion and as per rules-

LIC of India Class III and IV (Employment) Promotion Rules, 1987 –

(1) The Assistants who have completed 5 years of service and passed in the departmental Test or on acquiring prescribed technical qualifications – OR –

(2) 10 years service in the scale of Assistants – are eligible for promotion for the post of HGA.

13. In view of that the fact remains that concerned workman did not complete 10 years service in the scale of Assistant i.e. from 25.6.2001 to the date of notification i.e. 1.11.2010 and therefore he was qualified for the promotion under test category only and not with exemption. Accordingly, he was informed by the letter dt. 31.12.2010 to appear for the test to which he did not appear for the same and therefore he was not eligible for promotion. It can be said that he was not willing to fulfill the norms of promotions as per the rules referred to above. Therefore he was not given promotion of Higher Grade Assistant.

14. Realising this difficulty, the Learned Counsel for the concerned workman submitted that even the juniors to the concerned workman were promoted to the said post without written test from 2002 and therefore the concerned workman was eligible for the promotion without written test. Submission is to the effect that those who have passed the Licentiate examination were exempted from written test. The workman had got 45% in Licentiate examination, about 45% in Principals of Insurance and practice of life insurance and therefore he was exempted in book-keeping and Arithmetic. It is in that sense the management should have exempted him from written test for the post of Assistant Grade in 2010.

15. It is not possible to accept this submission. The Terms and Conditions of promotion of Class III and IV employees of first party is governed by LIC of India Class III and IV (Employment) Promotion Rules, 1987 and as per the Rules the qualification for promotion for Higher Grade Assistant is as under :—

categories Eligible	condition of Eligibility	marks to be allotted
section Heads Stenographers Assistants and all other employees in the scale of Section Heads or Assistants	section Heads Or 5 years' service in scale of (Assistant or Stenographer) and a pass in Departmental Test or on acquiring prescribed technical qualifications Or 10 years' service in the scale of (Assistants or Stenographers)	qualification and seniority : (Maximum of 10 marks for qualification and 20 marks for seniority) Maximum for both Work Record Interview

16. In view of this there is no question of any exemption from written test as is claimed by the concerned workman. Even there is no evidence on record to show that his juniors were promoted without written test. The fact remains that he was informed that he should appear for the written test but he did not appear and violated the norms.

17. Considering all these facts, it can be said that the action of management in not giving promotion to him is legal and justified. Issue No.1 is therefore answered accordingly in the affirmative.

Issue No. 2 & 3.

18. In view of my findings to Issue No.1, the concerned workman is not entitled to any relief. The reference is liable to be rejected. Hence order.

ORDER

The reference is rejected with no order as to costs.

Date: 18.07.2018

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1300.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एन. के. शर्मा एंड संस, अल्ट्राटेक सीमेंट वर्क्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 189/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.08.2018 को प्राप्त हुआ था।

[सं. एल-16025/4/2018-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st August, 2018

S.O. 1300.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 189/2016) of the Central Government Industrial Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. N.K. Sharma & Sons, Ultratech Cement Works and their workman, which was received by the Central Government on 20.08.2018.

[No. L-16025/4/2018-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID No. 189 of 2016

Sh. Arvind Mishra, S/o Sh. Paras Nath Mishra,
R/o H.No. 348, Patti Balikaran,
Ward No. 2, VPO-Lehra Mohabat, Tehsil-Nathana,
District Bathinda-152001.

…Workman

Versus

1. Managing Director M/s. N.K. Sharma & Sons, Ultratech Cement Works, Lehra Mohabat, Tehsil-Nathana, District Bathinda.

2. M/s. Ultratech Cement Works, Lehra Mohabat, Tehsil-Nathana, District Bathinda, through the unit head.

…Management

1. In the present case, the workman has directly filed claim under Section 2-A of the Industrial Disputes Act, 1947. It is clear from the statement of claim that workman Arvind Mishra was engaged by respondent no.1 and respondent no.2 was the principal employer since 02.09.2003. His last drawn salary was Rs.27,180/-. He was illegally discharged from service on 20.08.2016. He has challenged his termination before this Tribunal. The workman has claimed reinstatement with back wages.

2. Reply to the claim petition has been filed on behalf of respondent no.1 and 2 separately. In Para 1 of the preliminary objection, it has been alleged that applicant is a contract worker under respondent no.1 and respondent no.2 had nothing to do with his employment. The workman was transferred by respondent no.1 without changing his terms and conditions, but he did not report for his duty at the new place.

3. Respondent no.1, who has filed separate reply wherein relationship of employer and employee between the workman and the management is denied.

4. Conciliation between the parties tried and parties amicably settled the matter. Statement of Sh. Arvind Mishra, workman was separately recorded in the connected case bearing registration No.36/2016. Photocopy of his evidence placed on file. It is stated by the workman that he amicably settled the matter with the management and do not want to pursue the present reference. Statement of Sh. Chander Kant Pandey, AR of the management was separately recorded, who also stated that matter has been amicably settled between the workman and the management. The management is ready to take back the workman in job. The affidavit of the workman is Ex.WW1/A. It is now well settled position in law that any settlement arrived at between the parties is legally binding upon both the parties in terms of the provisions of Section 18 of the ID Act. In view of the amicabe settlement, there is no requirement to proceed with the present reference. Statement of the parties as well as affidavit Ex.WW1/A shall for the integral part of the Award.

5. Let copy of this award be sent to the Central Government for publication as required under Section 17(2) of the Act.

Dated : 03.07.2018
Place : Chandigarh

A. C. DOGRA, Presiding Officer-cum-Link Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1301.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैग्नीज ओर (इण्डिया) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 34/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.08.2018 को प्राप्त हुआ था।

[सं. एल-27011/3/1999-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st August, 2018

S.O. 1301.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/1999) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Manganese Ore (India) Limited and their workman, which was received by the Central Government on 17.08.2018.

[No. L-27011/3/1999-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/34/1999

Date: 13.07.2018.

Party No. 1 : The Manganese Ore (India) Ltd.,
3, Mount Road Extension, Sadar,
Nagpur – 440001.

Versus

Party No. 2 : Shri Mohammad Yunusuddin Shaikh,
Ex-Process Supervisor,
R/o 5, Patel Nagar, Borgaon,
G.W.T. Street, Nagpur.

AWARD

(Dated: 13th July, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of MOIL and their workman, Shri Mohammad Yunusuddin Shaikh for adjudication, as per letter **No.L-27011/3/99-IR (M) dated 17/19.11.1999,** with the following schedule:—

"Whether the action of the management of Manganese Ore India Ltd., Nagpur, in terminating the services of Shri Mohammad Yunusuddin Shaikh w.e.f. 31.03.1993 is legal and justified? If not, to what relief the said workman is entitled to and from which date?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Mohammad Yunusuddin Shaikh ('the workman" in short), filed the statement of claim and the management of Manganese Ore India Ltd. ("Party No. 1" in short) filed their written statement.

3. The petitioner filed a statement of claim by asserting that, he was appointed as Supervisor (Process) and posted at Dongri Buzurg Mines, Distt. Bhandara on 13.09.1990 and reported his duty on 05.10.1990. On 14.12.1990, he was authorized to perform duty as Plant Foreman under Regulation No. 3 of Metalli Ferrous Mine. After completion of probation period, he was confirmed by the Party No. 1, he got first increment on 18.12.1991 and second increment on 01.07.1992. According to the workman, his career was unblemished.

4. According to the workman, unfortunately on 06.07.1992, he failed ill and applied for leave and took treatment in different hospitals. Firstly he took his treatment from Dr. A.S. Gajbhiye, secondly he took treatment from 22.02.1993 to 23.03.1993 from Dr. D.P. Meshram in Mayo Hospital and thirdly he took treatment from 24.03.1993 at Nagpur Hospital. The Chief Medical Supdtt. issued a certificate as well as fitness certificate on 01.04.1993. He went to his head quarter to resume duty but Personnel Section refused to accept his joining. He was shocked and questioned for refusal to join duty, the Personnel Section replied that, his service was already terminated w.e.f. 31.03.1993.

5. According to the workman, Party No. 1 neither gave any notice nor communicated him. Due procedure was also not followed according to the Standing Order. Order of termination was not issued by the Competent Authority, but it was based on deceitful means without giving opportunity of hearing and enquiry. According to the workman, he filed Writ Petition No. 1357/1994 and 3462/1998. The Hon'ble Court passed an order dated 28.06.1996 and 15.12.1998, but management did not comply. According to the workman, his post i.e. Supervisor is vacant till today, but Party No. 1 wrongly intimated that, this post had already been filled up after his termination. According to the workman, order of termination is illegal, false, fictitious, irrefutably and against the principles of natural justice.

6. According to the workman, without job, he is unable to maintain his family, because he is not in gainful employment. He also asserted that, his termination is illegal, so he is entitled for reinstatement in his original post with full back wages.

7. Management filed its written statement, asserted that, para nos. 1 to 3, para nos. 15 to 18 and para nos. 21 to 24 are matter of records. They admitted para no. 4. They also asserted that, authorization was issued by the management for working as a Plant Foreman under Mines Act. It is not an ordinary order. It requires great responsibility. Rest of the facts are denied by the management. They also asserted that, the workman did not demand to the management, so this dispute cannot be treated as Industrial Dispute. They also asserted that, Hon'ble High Court rejected his demand in the Writ Petition. They also asserted that, his absence from duty even doctor issued fitness certificate. His extension of leave was not sanctioned. They also denied that, Chief HRD is above the Supdtt. of Mines, who issued the termination letter of the workman, but had been signed by other officer of HRD.

8. According to the management, mere receipt of medical certificates does not lead to the conclusion; leave on medical ground was sanctioned. Workman also applied for the post of Jr. Manager (Materials), but he was unsuccessful. There is no material on record to show malafide of any member of Selection Committee. During probation period, one month notice is sufficient to terminate, but after the confirmation, it requires three months notice for termination as per MOIL service regulation. According to the management, Item No. 5-a to F-e of the Vth schedule read with Section 25-T and U of the Industrial Dispute Act is not applicable to the workman.

9. According to the management, a notice was validly issued under the service regulation applicable to the workman Above said notice was issued since the workman inspite of repeated intimations, failed to resume duty or to gave explanation about his continuous absent. So, they prayed that, the workman is not entitled to any relief and requested that, said reference be answered in negative with cost to the Party No. 1.

10. In rejoinder, workman asserted all material facts, which were mentioned in the statement of claim. He denied that, he is not workman and also denied that, this Tribunal has no jurisdiction. He also admitted that, Service Regulation no. 14 and 15 are not disputed, but on the ground of absenteeism have not been terminated, because service is governed by rules and regulations. He also asserted that, after the order passed by the Hon'ble High Court; Party No. 1 had been stopped from raising such issue.

10. **Point of determination:**

i. Whether the termination of the workman w.e.f. 31.03.1993 is legal and justified?

ii. Whether the workman is entitled to any relief?

Reasons of determination:

11. Both parties filed their written notes of argument. On behalf of the management, in para 3 of the written notes of argument admitted that, "The workman was appointed in the clear vacancy as a supervisor (Process) at Dongri Mines, District Bhandara on 13.03.1990 by the Chief (HRD) Nagpur Head Office. He reported for duty on 05.10.1990 ---------- ---- he was confirmed under regulation 8 (9) of MOIL service regulation. Admittedly he was absent ……. From 06.07.1992 to 31.03.1993 …….by taking recourse of regulation 14 and 15 of the MOIL service regulations".

12. On the behalf of the workman, he examined himself and on behalf of the management, Shri Gururaj P. Kundargi was examined. Both witnesses were cross-examined by the opposite party. Now we take firstly the argument of workman with reference to their case laws and evidence. On behalf of the workman, it was argued that, neither any charge sheet was issued nor any show cause notice was issued to him before termination. He also argued that, he took medical treatment from different doctors and sent their papers to management, but in his court statement, he admitted that, in Nagpur, there are MOIL dispensaries, but he took his treatment from private doctors. He sent their medical papers to the management through under postal certificate, but he failed to give any reason, why he did not send these important medical papers through registered post and why he did not enquire in the department about medical leaves. He also admitted that, he took his treatment without admitting any hospital, so it appears that, his attitude towards sanction of medical leave was casual. He claimed medical leaves as his right.

13. On behalf of the management, it was argued that, they followed the procedure according to the MOIL Certified Standing Orders and also argued that, rules and laws governing medical leave of the employee were applied to the workman. On behalf of the management, Shri Gururaj P. Kundargi was examined by asserting that, he had personal knowledge as well as knowledge of record about the workman. He was working as Sr. Dy. Manager (Process), but in his cross-examination, he admitted that, he had no knowledge about sanctioning of the medical leave of the workman, telegram and medical certificates sent by the workman. He had also no knowledge, whether management seek any explanation from the workman about the medical leave. He had also no knowledge, whether termination letter was served to the workman or not? He also admitted that, medical leave of the workman was sanctioned or not. It shows

that, Shri Gururaj gave his court statement in casual way. It appears that, management is not serious about the court working.

14. On behalf of the workman, he filed case law:- Deepali Vs. K.J.A. Mahavidyalaya 2014 (2) Mh.L.J. 480, in which it was held that, " Wrongful termination of service – Reinstatement with continuity of service and back wages is the normal rule". It was also held that, "The Tribunal found the action of the management to be wholly arbitrary and vitiated due to violation of the rules of natural justice ……..allegations levelled against the appellant were frivolous…….she was not gainfully employed anywhere and the fact that the management had not controverted the same and ordered her reinstatement with full back wages".

15. The management relied on case law:- Mr. Trilok Sadashivrao Shende Vs. Bank of Maharashtra Writ Petition No. 1853 of 1996 date of order 31.07.2017, in which it was held that, "He was asked to report for duties…….will be treated as unauthorized absence without salary and allowances and the Bank shall be at liberty to take suitable action for unauthorized absence". The management also argued that, present petitioner was not workman in purview of I.D. Act, but both advocates agreed at the time of argument that, Hon'ble High Court in W.P. No. 678/2000 date of order 06.07.2001 and L.P.A. No. 50/2008 dated 04.07.2017, hold that, petitioner will come under the definition of workman as define u/s 2(s) of the I.D, Act though he was working as a Supervisor (Process). Now we see the important facts of this case.

16. The workman in his court statement asserted that, he wanted to join on 31.03.1993 but his para no. 12 of his court statement, admitted that, he was unfit up to 31.03.1993, so he wanted to join duty on 01.04.1993. On the contrary document W-15 shows that, joining report in 31.03.1993. This is the contradiction in part of the workman, which shows that, he was not fair in conduction of court proceedings.

17. Two documents filed by the workman, which are marked as W-17 is a notice dated 01.01.1993 by the management and W-18 was intimation given by the workman to the management on 12.07.1992, but both parties did not file acknowledgement of reaching this document on opposite party i.e. service of this document was not proved by both the parties. Moreover, notice W-17 was issued by the signature of Supdtt. of Mines but Appointing Authority was Chief H.R. Only direction of Hon'ble High Court, workman made his representation to the management, which was rejected, an intimation of rejection given to the workman by the signature of Chief H.R. After the perusal of the record, it also appears that, workman did not pray or request to the management after refusing to join on 01.04.1993, but he started court proceedings and on the direction of the Hon'ble High Court, he filed representation W-23 and 24 by the direction of Hon'ble High Court. The management rejected the representation of the workman by saying that, no such post was vacant. I want to also mention here that, in his above representation, workman stated that, "I would not claim any back wages for the period, I have not worked, hoping for your early consideration on my representation to you".

18. The workman in his pleadings as well as his evidence asserted that, he was not in any gainful employment since his termination. Management did not cross in this point and did not lead any evidence. This shows that, he was not in gainful employment. It shows that, evidence of the workman appears to be reliable in this point.

19. The management argued that, they followed the rules 14 and 15 of the Service Regulation. They also admitted that, Appointing Authority of the workman was Chief (HRD) Nagpur and he was also confirmed under MOIL Regulations. According to the Regulation 14, no leave is granted for continuous period of 120 days, which may be extended maximum period of two years. This argument was denied by workman by saying that; his leave was near about nine months. He also argued that, without P.E. and D.E. his service was terminated on the basis of notice. He also argued that, Regulation No. 15 was not followed.

On perusal of the Regulation No. 12 to 17, no service of employee will be terminated without giving proper opportunity of hearing. So, in this point, argument of workman appears to be more probable than management. So, argument of the management in this stage is unsustainable.

20. On behalf of the management, they produced management's Standing Orders. Rule 35 of these Standing Orders provides for discharge and termination of service of employee. This rule also provides that, "No workman shall be discharged from the service …….. Given a opportunity of explaining charges framed against him in the manner prescribed in order No. 31". In my opinion, rule 32 is applicable in this case. Rule 37 and 40 fix liability on management to follow the procedure or Standing Orders. Rule 37 also provides that, "Every permanent workman shall be entitled to a service certificate in the form prescribed by the management at the time of his dismissal or discharge …. as case may be". In this reference, argument of workman appears to be more appropriate that, "Any employee whether casual, temporary or permanent can be terminated as per the provisions of the Standing Orders ……. Admittedly neither any charge sheet was issued nor was any show cause notice served ……. Before termination of the service".

On perusal of the records, it appears that, service of permanent employee was terminated by the management on the basis of conditional notice dated 01.01.1993. No charge was framed and no formal order of termination or dismissal was issued by the management. It also shows that, management did not follow their own Standing Orders and breach Standing Orders Rule 37 & 40. So, in my opinion, this act was done arbitrarily and management's officers are

responsible for doing illegal act. They may be Chief (HRD), Mines Manager or Personnel Manager (Mines) etc. On this wrong decision, unnecessarily litigation was pending for **last 20 years.**

21. State Bank of Bikaner and Jaipur Vs Nemichand, Civil Appeal No. 5861 of 2007, SC dated 01.03.2011, Regional Manager, U.P.S.R.T.C. Vs Hotilal, Civil Appeal No. 5984 of 2000 dated 11.02.2003, State Bank of India Vs Ramesh Dinkar, Civil Appeal No. 2055 of 2003 dated 11.08.2006, Devendra Kumar Vs State of Uttaranchal, Civil Appeal No. 1155 of 2006 dated 29.07.2013 and Bharat Forge Company Ltd. Vs A.B. Zodge, A.I.R. 1996 SC 1556, in which following legal principles are laid down:—

i. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record.

ii. Therefore, courts will not interfere with findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a Tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, malafide or based on extraneous considerations.

iii. The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority.

22. In case law--- Delhi Transport Corp. vs. Ombir Singh 2017 LLR 252, Hon'ble Lordship held that "Where principles of natural justice are not being complied with, then in such cases, compensation ought to be granted even if termination of service is found to be valid". On the basis of principle laid down in Engineering Laghu Udhyog Employees Union vs Judge, Labour Court and Industrial Tribunal & others – (2003) 12 SCC 1 in which it was held that:- "no difference whether the matter comes before the tribunal for approval under S.33 or on a reference under S.10 of the Industrial Dispute Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper." "A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper." These principles are also laid down by Hon'ble Supreme Court in case laws- Punjab Urban Planning & Development authority Vs. Mandip Singh (2016) 7 SCC-571, UPSRTC Vs. Gopal Shukla (2015) SCC 603, Sanjay Singh Vs. National Seed Corporation (2017) 13 SCC 269, V.D. Vegad Vs. State of Gujurat (2017) 2 SCC 508 and Angikr Oriental (Arbic) Higher Secondary School Vs. A. Harnoon (2017) 2 SCC 510.

23. Judging the present case in hand with the touch stone of the principles as mentioned above, as I observed that, management did not follow the basic rule as per prevail in their department. Even they did not issue formal dismissal order. Workman fought for his right from very long time and department defended their wrong stand. Many time, Hon'ble High Court issued directions and this Tribunal also issued notice for settlement, but management did not pay heed with true spirit. They also failed to convince to the other party or Court, why settlement was not taken place, this way or that way. Management also argued that, post of Supervisor (Process) is not vacant; it may be possible due to lapses of long time. On going the above discussion, I also come on conclusion that, workman was equally liable for not following the leave rules. He claimed medical leaves as his right. In medical certificates, doctor mentioned different type of diseases and Chief Medical Supdtt. did not mention the name of disease, so there is no uniformity, which shows the disease suffered by the workman.

As per above discussions and principles laid down in the above case laws, workman is entitled for Rs. 7,00,000/- (Rupees Seven lac only) compensation in lieu of reinstatement in service and back wages. It is also directed that, management may recover this amount **with interest** from defaulting officers as case may be and in future, if it is possible, re-employment of the workman may be considered sympathetically. Hence, it is ordered:-

ORDER

The action of the management of Manganese Ore India Ltd., Nagpur, in terminating the services of Shri Mohammad Yunusuddin Shaikh w.e.f. 31.03.1993 is not legal and justified, so he is entitled for Lumpsum monetary compensation of Rs. 7,00,000/- (Rupees seven lac only) in lieu of reinstatement in service, which is payable within one month from the publication of this award in official gazette, failing which, amount due to workman will carry interest of 6% per annum from the date of due to the workman to the date of actual payment of the amount to the workman. Management may recover this amount as per aforesaid direction from the defaulting officers. The workman is not entitled for any other relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1302.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैग्नीज ओर (इण्डिया) लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 43/2014-15) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.08.2018 को प्राप्त हुआ था।

[सं. एल-27011/5/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st August, 2018

S.O. 1302.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2014-15) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Manganese Ore (India) Limited and other and their workman, which was received by the Central Government on 17.08.2018.

[No. L-27011/5/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/43/2014-15

Date: 03.07.2018

Party No. 1(a)	**:**	The Chairman-cum-Managing Director (Tech), Manganese Ore (I) Ltd., MOIL Bhawan, I-A, Katol Road, Nagpur – 440013.
Party No. 1(b)	**:**	The Chief (Mines), Munsar Manganese Mines of MOIL Ltd., PO: Khairi Bijewada, Tq. Ramtek, Distt. Nagpur – 441106.
		Versus
Party No.2	:	The Secretary General, MOIL Kamgar Sanghatan (INTUC), C/o MOIL Ltd., MOIL Bhawan, Katol Road, Nagpur – 440013.

AWARD

(Dated: 03rd July, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employer, in relation to the management of Manganese Ore (I) Limited and their union, MOIL Kamgar Sanghatan (INTUC) for adjudication, as per letter **No.L-27011/5/2014- (IR(M) dated 31.10.2014,** with the following schedule:-

> **"Whether the demand of the workman Sh. Pravin Jhhiru Mohbiya, Fieldman of Munsar Manganese Mines of the MOIL Ltd. of the change/amendment in the date of birth in his service record from 01.07.1962 to 05.01.1963 is legal, proper and justified. If so, to what relief the workman is entitled and what other directions are necessary in the matter?"**

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 10.02.2015, Shri R.N. Sen, advocate filed vakalatnama on behalf of the petitioner and on 20.11.2017, Shri Sharad Ghate, advocate filed vakalatnama for the management. On behalf of the petitioner, several requests were made to file the statement of claim but he failed to file the same. It also appears that,

he was not regular in appearing on dates. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 21 अगस्त, 2018

का.आ. 1303.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैग्नीज ओर (इण्डिया) लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 47/2014-15) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.08.2018 को प्राप्त हुआ था।

[सं. एल-27011/9/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st August, 2018

S.O. 1303.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2014-15) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Manganese Ore (India) Limited and other and their workman, which was received by the Central Government on 17.08.2018.

[No. L-27011/9/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/47/2014-15

Date: 03.07.2018

Party No. 1(a)	**:**	The Chairman-cum-Managing Director (Tech), Manganese Ore (I) Ltd., MOIL Bhawan, I-A, Katol Road, Nagpur – 440013.
Party No. 1(b)	**:**	The Chief (Mines), Munsar Manganese Mines of MOIL Ltd., PO: Khairi Bijewada, Tq. Ramtek, Distt. Nagpur – 441106.
		Versus
Party No.2	:	The Secretary General, MOIL Kamgar Sanghatan (INTUC), C/o MOIL Ltd., MOIL Bhawan, Katol Road, Nagpur – 440013.

AWARD

(Dated: 03rd July, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employer, in relation to the management of Manganese Ore (I) Limited and their union, MOIL Kamgar Sanghatan (INTUC) for adjudication, as per letter **No.L-27011/9/2014- (IR(M) dated 31.10.2014,** with the following schedule:-

"Whether the demand of the workman Sh. Tukaram Ramprasad, Fieldman of Munsar Manganese Mines of the MOIL Ltd. for the change/amendment in the date of birth in his service record from 30.06.1957 to

12.09.1960 is legal, proper and justified. If so, to what relief the workman is entitled and what other directions are necessary in the matter?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 10.02.2015, Shri R.N. Sen, advocate filed vakalatnama on behalf of the petitioner and on 20.11.2017, Shri Sharad Ghate, advocate filed vakalatnama for the management. On behalf of the petitioner, several requests were made to file the statement of claim but he failed to file the same. It also appears that, he was not regular in appearing on dates. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1304.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. ए. एम. एन्टरप्राईसिस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 60/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-32011/07/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1304.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of M/s. A.M. Enterprises and their workmen, received by the Central Government on 24.08.2018.

[No. L-32011/07/2013-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 60 of 2013

Parties:

Employers in relation to the management of
M/s. A.M. Enterprises

A N D

Their workmen.

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management	:	Mr. S.K. Karmakar, Ld. Counsel with Mr. A.K. Bose, Ld. Counsel and Mr. S.S. Roy, Ld. Counsel.
On behalf of the Workmen	:	Mr. S.H. Quader, Ld. Counsel with Mr. Mr. Gayen, Ld. Counsel.

State: West Bengal Industry: Port & Dock

Dated: 8th August, 2018

AWARD

By Order No.L-32011/07/2013-IR(B-II) dated 19.11.2013 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s. A.M. Enterprises is justified by terminating the service of 2(Two) no. of workmen namely Shri Tarapada Patra and Shri Biswabhanu Jana is legal and justified? What relief the workmen are entitled to?"

2. When the case is taken up today for hearing, learned counsel for the workmen has submitted that both the workmen have been taken back in service by the management and therefore, they may be permitted to withdraw the case. It has also been pointed that both the workmen have filed their respective application in this regard.

3. Considered submission of the learned counsel for the workmen. Since this is a reference made by the Central Government, no question giving permission to the workmen concerned to withdraw the case arises. It is, however, clear that the workmen are not interested to proceed further in this case and no evidence is adduced in support of their case. Therefore, present reference is answered in affirmative. Workmen concerned are not entitled to any relief.

Dated, Kolkata,
The 8th August, 2018.

Justice RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1305.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 08/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-39025/01/2017-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1305.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 24.08.2018.

[No. L-39025/01/2017-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 08 / 2016

Between:-

Vishes Yadav son of Mohan Lal Yadav,
Avadh Prakash Bajpai,
Legal Advisor, Rashtriya Mazdoor Congress,
29-A Kabir Nagar, Dayal Bagh,
Agra-282005.

AND

The Branch Manager,
Indian Overseas Bank,
Branch office , Bye-pass Road,
Near Sherganj Astauni,
Agra-282007 & others.

Award under section 33-A of Industrial Disputes Act, 1947.

1. The worker Vishesh Yadav has moved the present application through one Sri A P Bajpai, trade union leader under section 33-A of Industrial Disputes Act, 1947, that he is working with the management at the branch mentioned in the array of parties as a sub staff with effect from 01.07.08 as regular and permanent employee. Considering the long un interrupted services of the worker the management under a settlement has invited application from all eligible employees working in the bank to grant them the status of regular and permanent

employee of the bank under settlement dated 17.02.11 and the worker submitted his form duly filled in by him before the management which was forwarded to the competent office by the branch manager of the bank. Subsequently worker has also submitted relevant documents in original to the bank. The worker from the date of his initial appointment is working continuously and had completed more than 240 days of continuous service in each calendar year and thus he became entitled for his regularization in the service of the bank. The Branch manager on 13.01.15 refused to take work from the worker on the plea that he had not withdrawn his case from and from today his services were being dispensed with willingly and deliberately knowing the fact that an industrial dispute is pending before the ALC© Kanpur which is an offence under the provisions of Industrial Disputes Act. Despite making of repeated requests the management did not acceded to his request nor he was taken back in the employment of the bank, thereby there exist a valid industrial dispute between the parties under section 33-A of the Act and accordingly it has been prayed by the worker that he be taken back in the employment of the bank with full back wages and with all consequential benefits.

2. The worker along with his application has also submitted a number of documents.

3. The management in their reply has alleged that the present dispute has been raised through a union which is not recognized, therefore, the application is liable to be rejected. Worker is not the employee of the bank. It is further pleaded that as per clause 7.6 of the settlement dated 17.02.11 between the bank management and recognized union mere submission of undertaking / certificate on the part of the temporary messengers/sweepers will not entitle them for absorption in the bank unless approved by the competent authority; hence the entire claim is highly refuted. It is further stated by the management that there has been no violation of provisions of the Industrial "Disputes Act, 1947 and the petitioner knows well tht the service conditions in the bank is strictly governed the laid down rules and procedure and therefore, bank is bound to follow the guidelines and claim of the petitioner is in violation of the guidelines. The management bank being a public sector bank is bound to act with the rules formed by the bank in matters relating to service conditions and any other action would be violative of the principles of natural justice. The claimant is not entitled to be made permanent or absorbed as claimed by him.

4. On 03.08.18 when the case was taken up for hearing the union moved an application before the tribunal alleging therein that the management has again employed the worker with continuity of service, therefore, considering the changed circumstances of the case worker is not inclined to press his claim before this tribunal as no fruitful purpose would be served and requested to pass suitable award in the case.

5. Considering the request of the union, the tribunal is of the opinion that no fruitful purpose would be served in case, the case is kept pending, therefore, it is held that the worker is not entitled for any relief pursuant to his claim application and accordingly his application under section 33-A is disposed of as not pressed.

6. Award is made accordingly in the above terms.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1306.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई.डी.बी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 27/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/16/2008-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1306.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of IDBI Bank and their workmen, received by the Central Government on 24.08.2018.

[No. L-12012/16/2008-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/27 of 2008

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

I.D.B.I. BANK

The Deputy General Manager (ER)
IDBI Bank
HR Deptt. IDBI Ltd.
21st floor, D-Wing, IDBI Tower
WTC Complex, Cuffe Parade
Mumbai 400 005.

AND

THEIR WORKMEN

Shri Keshav Shriyan
Flat No.219/5863 IDBI Staff Quarters
R.N. Narkar Marg
Ghatkopar (E)
Mumbai 400 075.

APPEARANCES:

FOR THE EMPLOYER : Mr. M. V. Joglekar, Advocate

FOR THE WORKMAN : Mr. M. B. Anchan, Advocate

Mumbai, the 31st July 2018.

AWARD PART-II

The Government of India, Ministry of Labour & Employment by its Order No.L-12012/16/2008-IR (B-II), dated 30.04.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of IDBI Bank Ltd, Mumbai in alleged illegal termination of the services of Shri Keshav Shriyan is justified? If not, what relief the workman is entitled to?

2. After receipt of the reference, both the parties were served with notices. They appeared in the reference through their respective representatives. The second party workman filed his statement of claim at Ex-6. According to him, first party management employed him in August, 1978 as a Peon. He was promoted as Subhedar and thereafter as a Sorting Clerk. The workman rendered 29 years of service. He was sincere in performing his duties. His record is unblemished. Police have implicated him in a false case and the Bank authority relied on the police report. They made a farce of inquiry and terminated the service of the workman w.e.f. 11/6/2004. The charge sheet dated 9/4/2003 is totally vague and false. Infact there are no charges leveled against him. The inquiry conducted was not fair and proper. On earlier occasion similar type of charge sheet dated 19/4/2002 was issued to the workman alleging that he had wrongfully obtained demand drafts which were issued in the name of the Bank. In the departmental inquiry the said charges were not proved. The demand draft at Mumbai branch was encashed by some outsider. The Bank had therefore taken disadvantage of the police inquiry and without any independent evidence they had implicated the workman and held that he had wrongfully obtained the demand draft and passed the same to the outsider.

3. The inquiry officer was bias. He helped the Bank in all possible ways. The principles of natural justice were not followed. The inquiry officer relying on the police report, without any evidence held the workman guilty. Relying on his report, Bank has terminated his services and also passed an order to recover an amount of Rs.2,08,000/- from the terminal dues of the workman. According to him, three demand drafts of the amount of Rs.14,79,069/- were similarly misplaced and encashed by some outsiders. However Bank has not taken action against the sorting clerk or against any other employees working at the head office. The workman is victimized unnecessarily. The inquiry against him is not fair and proper. The findings of the inquiry officer are perverse. The order of termination based on such findings is not legal and proper. Therefore the second party workman prays that said order of termination dated 11/06/2004 be set aside and quashed. He also prays that he be reinstated with full back-wages and incidental benefits with continuity of service from 11/06/2004.

4. The first party management resisted the statement of claim vide its written statement at Ex-8. According to them, the termination of second party was effected on the basis of report of inquiry officer in the departmental inquiry. He was held guilty of an act of serious misconduct. The workman was served with the charge sheet. He fully participated in the inquiry proceeding. Shri N.A. Indulkar an office bearer of union was his defence representative. The inquiry officer found him guilty for obtaining a demand draft No.47017 dated 24/05/2001 of Rs.2,08,000/- issued by Lord Krishna Bank Ltd. Coimbatore in favour of IDBI Bank. The second party was found guilty for having passed the said DD to Shri Sandeep Parshuram Jadhav alias Narendra S. More. It was presented for clearing by Pariwarthan Co-op Bank Ltd. on 1/6/2001 on behalf of M/s. Indian Dyes Bleach and Inks a sole proprietary concern of Shri Narendra S. More who had

withdrawn major portion of the proceeds. During investigation of the crime, certain amount was recovered from the second party. Earlier also three DDs issued in favour of IDBI Bank were fraudulently encashed. On complaint of Bank authority, Police have arrested the second party. He was also put under suspension w.e.f. 19/10/2009. Charge sheet was issued and departmental inquiry was initiated against the second party. However no penalty was imposed on the second party as he was given benefit of doubt. The said incident is not the subject matter of the inquiry in question.

5. They denied that entire service of the workman was unblemished and he was sincere workman. They denied that workman was falsely implicated in the case by the police and authorities relied on the police report and issued charge sheet to the second party. The inquiry officer found him guilty of the charges leveled against him viz. misconduct relating to obtaining demand draft wrongfully of Rs.2,08,000/-. The inquiry officer held him guilty being instrumental in fraudulently encashing the amount with the help of his accomplice by using fictitious accounts. They denied that charge sheet was vague and no charges were leveled against the workman. According to them the inquiry officer has given full opportunity to the workman to defend himself. He arrived at the conclusion that the workman was guilty of the charges leveled against him. On the basis of his report, the competent authority terminated the services of the workman. According to them the workman is not entitled to the reliefs claimed for. Therefore they pray that the reference be dismissed with cost. The second party workman denied the contents in the written statement by filing his rejoinder at Ex-9. He also repeated the contents in the statement of claim.

6. This tribunal vide Award Part – I dated 5.8.2011 ordered that the inquiry and findings of the inquiry officer are set aside. The parties were directed to lead their respective evidence in respect of the charges leveled against them. Being aggrieved by the Award Part – I dated 5.8.2011, the management preferred WP No. 860 / 2012. The Hon'ble High Court has set aside the Award Part – I vide judgment dated 17.10.12. The workman then filed WP No. 1481 / 2013 and challenged the findings against the Issue No.1 namely whether enquiry is fair & proper ? The Hon'ble High Court has dismissed the said writ petition. The concerned workman filed petition for special leave to appeal CC No. (S) 10196 / 2015 in WP No. 1481 / 2013 passed by the Hon'ble High Court. The Hon'ble Supreme Court dismissed the said SLP.

7. Now the only issue to be decided by this tribunal is whether the punishment of dismissal awarded to the workman is just & proper or not ?

8. In this respect the concerned workman has adduced evidence by way of affidavit Ex.28 and he was cross examined by the management. The first party has not adduced the additional evidence in this respect and passed the pursis mentioning therein that the evidence of the first party bank may be treated as closed.

9. I have heard the submissions of both the parties. Following issues arise for my determination, vide Ex.10 and my findings thereon for the reasons to follow are as under:

Sr. No.	Issues	Findings
3.	Does first party justify its action of termination ?	Yes
4.	If not, what relief is second party entitled to ?	No
5.	What order ?	As per final order

REASONS

Issue no.3 :-

10. At the first blush, I would observe that so far issue as regards fairness of enquiry & findings of E.O. are concerned, there is final judicial pronouncement on these two issues which cannot be re-opened.

11. Even then the Learned Counsel for the concerned workman submitted that while imposing punishment, the management has not considered the past record, gravity of misconduct & aggravating circumstances. Submission is to the effect that the Court of Metropolitan Magistrate, 13 Court, Dadar, Mumbai in case No. 2152/PW/2005 vide judgment dated 5.2.18 acquitted accused Nos. 2, 3, 4 & 6 for the offences punishable u/s. 420, 467 & 468 read with section 34 of IPC and the said judgment of Metropolitan Magistrate was challenged by the bank in the Hon'ble High Court at Mumbai in civil suit No. 639 / 2004 which came to be dismissed for want of evidence. As such the said criminal case filed against the concerned workman was concluded and he was acquitted by the criminal court and even the civil suit filed by the bank for recovery of claim of Rs. 208000/- was dismissed and these aspects need consideration while deciding this issue. With this the submission is that in view of dismissal of criminal case and civil suit filed by the bank, the workman is entitled to be reinstated in service with full back wages and continuity of service.

12. It is not possible to countenance the view propounded by the Learned Counsel for the concerned workman since the departmental enquiry as regards the alleged misconduct was held against the concerned workman which was found to be fair & proper and even the findings of the E.O. are fair & proper. In departmental enquiry the evidence is to be appreciated by virtue of preponderance of probability while in criminal case strict proof is required. Once the findings of the E.O. are held to be fair & proper then there is no question of re-appraising the evidence and to examine the correctness of the findings on the ground of the findings of criminal court. The powers u/s. 11A of I.D. Act has very limited scope and as such in case of dismissal on misconduct the tribunal does not act as court of appeal and substitute its own judgment for that of the management and that tribunal will interfere only when there is want of good faith, victimization, unfair labour practices etc. on the part of management.

13. In the context, the Learned Counsel for the management submitted that the concerned workman was working in the bank and the enquiry was conducted in respect of alleged mis-appropriation by him. Submission is to the effect that so far bank employees are concerned, they are required to exercise higher standard of honesty and integrity. They deal with money of depositors and customers. Every employee of the bank is required to take all possible steps to protect the interest of the bank and discharge the duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank employee. Good conduct & discipline are inseparable from the functioning of every employee of the bank and in the circumstances the punishment of removal / termination given to the concerned workman is not shockingly disproportionate since charges proved against the concerned workman were not casual in nature but were serious in nature.

14. In the context, he seeks to rely on the decision in case of Shivaji Daulat Dadar V/S. Divisional Controller, Maharashtra State Road Transport Corpn., Ahmadnagar, - 2015 LLR 1161 to submit that in case of proved mis-appropriation there is no question of considering past record and the Labour court cannot substitute penalty imposed by the employer in such cases.

15. Learned Counsel for the respondent has placed reliance on the decision in case of Syndicate Bank V/S. Hanuman Thappa – 2009 LLR 168 to submit that the petitioner in that case was appointed as Clerk and was charge-sheeted for having committed acts of misconduct pre-judicial to the interest of the bank in accordance with clause 19.5 (j) of Bipartite Settlement. The enquiry report concluded that the respondents committed acts of misconduct of mis-appropriations of moneys and falsification of records and amounts. In that case the service of the concerned employee came to be terminated and the concerned employee has challenged the order of termination. It was considered that when the employee holds the position of trust, honesty and integrity in built requirements of the functioning calling for highest degree of integrity and trustworthiness. Leniency in the matter of misconduct proved touching upon the honesty and integrity of the employee would lead to misplaced sympathy. It has been observed in para – 18 of the judgment that having regard to the nature of charge against the respondent more appropriately one of misappropriation and falsification of records. It cannot be said to be too minor so as to take a lenient view. It was concluded that there was no need to interfere with the quantum of punishment.

16. Next submission of Learned Counsel for the respondent is that jurisdiction of Labour court u/s. 11A of the act is not the jurisdiction of sympathy only if the Labour court finds that punishment imposed on the workman is disproportionate to the gravity of misconduct committed by him then the Labour court can interfere with the punishment u/s. 11A of the I.D. Act. In the context he has placed reliance on the decision in case of Perur Service Sahakarana Bank Ltd. V/S. Industrial Tribunal & Anr. – 2008 (117) FLR 55.

17. So far the facts of the present case are concerned, as seen earlier the workman was working in the bank as a Inward / Outward Clerk and he was held guilty of charge leveled against him. Considering proved charge of misconduct against the concerned workman, it cannot be said that punishment of dismissal awarded to him is very harsh and disproportionate. In view of legal position cited supra and the scope of section 11A, I find that the action of management of termination of services of the concerned workman is justified. This issue is therefore answered accordingly in affirmative.

Issue no.4 & 5 :-

11. In view of my findings to Issue No.3, the second party workman is not entitled to any relief. Hence the order:

ORDER

The reference is rejected with no order as to costs.

Date: 31.07.2018

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1307.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 127/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/4/2009-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1307.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 127/2017) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 24.08.2018.

[No. L-12012/4/2009-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI.

ID No. 127/2017

Shri K.L. Chhabra
WZ 20-A, Om Vihar Phase-I,
Uttam Nagar,
New Delhi …Workman/Claimant

Versus

The Asstt. General Manager
Punjab National Bank,
Zonal Office, DAC Cell, 4th Floor,
Rajendra Bhawan, Rajendra Place,
New Delhi …Management

AWARD

Background of the instant case is that a reference under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act), was made by the Appropriate Govt. vide letter No.L-12012/4/2009-IR(BII), New Delhi dated 2.6.2009 with following terms of reference :-

> "Whether the action of the management of Punjab National Bank, New Delhi in not paying payment of the recovery of the due amounts and benefits as mentioned in the claim application dated 7/5/2007 and benefits of Shri K.L.Chhabra is just, fair and legal ? What relief the workman concerned is entitled to and from which date ?

2. The aforesaid reference was decided by my learned Predecessor vide Award dated 30-11-2010 primarily on the issue of espousal and no findings was rendered on merits of other issues or on terms of the reference. The workman/ claimant moved Writ Petition (C) No.307/2012 and the Hon'ble High Court vide order dated 18/4/2017 while deciding the issue of espousal in favour of the, directed this Tribunal to decide other issue/s on merits on the basis of evidence already recorded.

3. Briefly stated facts of the case as made out from the claim application dated 7/5/2007 filed by the claimant/workman before Labour Commissioner and claim petition filed subsequently before the Tribunal are that the workman joined services of the Management as clerk/cashier on 12/8/1977 and was confirmed as such on 12/2/1978. He was transferred to three different branches upto September, 1981 and ultimately posted in Printing & Stationery Department of the Management Bank at Wazirpur, Delhi. According to him, Shri U.K. Gupta, Manager, Stationery Deptt., became biased and vindictive towards him and a charge sheet was served upon the workman on 28/1/1985 and after an enquiry, **punishment of stoppage of one annual increment was awarded with cumulative effect vide order dated 22/6/1985.** On 2**8/10/85** while posted at Najafgarh Branch of the Management Bank, he was suspended but was reinstated vide order dated 16/8/89, with direction to report at CDPC Branch, Ram Tirath Nagar, Delhi. The workman filed writ petition CWP No.141/93 before Hon'ble High Court of Delhi which was disposed of with a direction to the

bank that Shri Chhabra shall be paid all benefits accrued to him during the period of suspension from 1985 to 1989. Thereafter the workman filed a contempt petition bearing CCP No.131 of 1995, claiming arrears of annual increment from 1985 onwards besides officiating allowance for the post of teller during 8/10/85 to 6/8/89 and leave fare concession etc.. The said contempt petition was dismissed vide order dated 5/10/1999 being devoid of merits.

4. On 21/3/1991 the workman was suspended again by the Bank. His suspension was revoked on 18/7/1992 pending enquiry. On conclusion of the enquiry, disciplinary authority awarded punishment of stoppage of one increment with cumulative effect was awarded vide order dated 4/5/1995. His period of suspension was treated as not spent on duty. Similarly, on 25/9/1993 the workman was again suspended by the Bank. His suspension was revoked on 4/11/1994 pending enquiry. On conclusion of the enquiry, disciplinary authority awarded punishment of stoppage of two increments with cumulative effect, vide order dated 28/1/1995. The period of his suspension was treated as not spent on duty.

5. The workman remained absent from duty from 4/11/1994 to 25/5/1995 unauthorisedly and he was deemed to have voluntarily retired from his employment of the Management w.e.f. 25/5/1995. Then the workman raised an industrial dispute bearing ID No.92/96 which was adjudicated in his favour vide Award dated 25/7/2002 whereby the Tribunal held the order dated 25/5/1995, declaring the workman to have voluntarily retired from service, to be illegal. He was ordered to be reinstated in service with full back wages and arrears of pay.

6. On 16/1/2004 the workman while posted at Naraina Vihar Branch of the Management Bank was suspended again and a charge-sheet was issued to him 4/2/2006. After completion of the enquiry, punishment of dismissal of service was imposed upon him, vide order dated 16/8/2007. The workman raised an industrial dispute and the appropriate Govt. referred the dispute to the Tribunal which was adjudicated as ID No.26/2009 and therein it was ordered that punishment of dismissal would be substituted with a punishment of discharge simplicitor, with release of retiral benefits to the workman herein.

7. In the meanwhile on 7/5/2007 the workman raised a dispute before the Conciliation Officer so as to challenge his first suspension order dated 15/1/1985, award of punishment of stoppage of one increment with cumulative effect vide order dated 22/6/85, as well as his second suspension order dated 28/10/1985, on the plea that the charge-sheet was not served upon him for a considerable long period and the Management Bank reinstated him in service on 16/8/89 pending disciplinary enquiry and as such, the said order was not justified. The workman claimed that he was entitled to payment of full wages, after adjustment of subsistence allowance paid to him. He was entitled to officiating allowance, payment of leave fare concession and accumulation of leaves of various types besides annual increments. He also claimed that his third suspension w.e.f. 21/3/1991 was also illegal, and as such, he had made a representation to Chief Manager, Patparganj Branch for payment of subsistence allowance as per rules, which was not paid in consonance with rules. Though he was reinstated on 18/7/1992 but annual increments were not released in his favour. Unfolding various litigation between him and the Management Bank, the workman/claimant has prayed for payment and recovery of the amounts/benefits as detailed in para 78 to 87 of his claim petition besides payment of interest @ 18% p.a. with retrospective due dagtes till the date of payment.

8. The claim petition was/is resisted by the Management Bank by filing written statement and took preliminary objection that the individual dispute as referred by the appropriate govt. can not acquire the status of industrial dispute for want of valid espousal by a recognized union of the establishment of the Bank. While denying the allegations of the claimant/workman, it has been pleaded that the a stale claim made by the claimant cannot be entertained inasmuch as the claimant/workman was suspended time and again and on account of punishment awarded to him vide order dated 28/2/95 and 4/5/1995, whereby his suspension was treated not spent on duty and as such he was not entitled to any other benefits excepting the subsistence allowance already paid to him. As regards the claim of the working regarding interest on certain payments from 28/10/89 to 16/8/89 made by the bank, it has been pleaded that the in fact the claimant had filed a contempt petition/LCA pursuant to the order of the Hon'ble High Court of Delhi in 1993, which LCA was dismissed vide order dated 17/1/2006. LCA No.16/99 also moved by the workman claiming Leave Fare Concession for the period 28/10/85 to 16/8/89 was also dismissed vide order dated 15/3/2007. Prayer has been made for dismissal of the claim petition being devoid of merits.

9. On the pleadings of the parties, my learned Predecessor had framed following issues :-

1. Whether without espousal by the union, the present dispute does not fall within the ambit of industrial dispute?

2. Whether the workman is entitled for release of arrears of consequential benefits in view of his release of increments w.e.f. 25/5/95?

3. As in terms of reference?

4. Relief.

10. The claimant tendered his evidence by way of affidavit Ex.WW1/B (dated 28/8/2017) , whereas the Management examined one Shri Vinay Tiwari, Chief Manager, PNB, Circle Office, Rajendra Place, New Delhi as MW2 who tendered his affidavit Ex.MW1/A along with documents Ex.MW1/1 to Ex.MW1/4 before this Tribunal.

11. I have heard the claimant who appeared in person and Shri Rajat Arora, A/R for the Management bank and have gone through the records carefully.

12. As already mentioned that the findings on issue No.1 given by my learned Predecessor vide Award dated 30/11/2010 were set aside by Hon'ble High Court vide order dated 18/4/2017 passed in Writ Petition No.307/2012 and the said issue stands decided in favour of the workman/claimant. So, this Tribunal proceeds to decide issue No. 2 to 4.

Issues No. 2 to 4 :-

13. All these issues being inter-related are being taken up together for the purpose of discussion as they can be conveniently disposed of .

14. At the outset I may mention that the claimant had filed a very long statement of claim with a very long prayer and he also filed application under Section 33-C(2) of the Act in between. As such the claimant vide order dated 2/4/2018 was directed to furnish in writing the details of dues which have not been paid and specifically the period which have not been paid. However, he did not comply with the said order and during the course of arguments, he submitted that he has already filed his written arguments dated 12/1/2018 (running into 20 pages) on record wherein he has made all such claims/prayers to which he is entitled to.

15. According to the aforesaid written arguments dated 12/1/2018, the claimant has prayed that the Management be directed to :-

(a) Set aside punishment orders dated 28.6.85, 28.2.95 and 4.5.95 as mentioned under prayer column vide para No.77 of his claim statement.

(b) Treat the above-said suspension periods on duty, taking into account provision of clause 19.12(b) vide document No.W-26/2, listed at Sl.No.34 in the list of documents.

(c) Calculate the payment of entire arrears w.e.f. 15.1.85 to 24.5.95 from their side, after taking into account arrears preparation according to circular no. mentioned vide para No.29 of these written arguments.

(d) Pay an amount of Rs.2486/- which is due we.f. 1.3.95.

(e) Pay the amounts of special/officiating allowance which is due w.e.f. 25.5..95

(f) Pay amount of LFC benefit as mentioned vide para No. 86 of claim

(g) Accumulate various types of leaves as mentioned vide para No.87 of his claim statement.

(h) Pay to and fro conveyance expenses as mentioned in para No. 89.

(i) Pay the amount of interest @ 18% per annum on amount found due to him with retrospective due dates till date of actual payment.

(j) Pay the amount of suitable exemplary cost alongwith costs of this dispute.

16. As regards prayer (a) to (g) above of the claimant, I may mention that excepting for the bald statement, the workman/claimant has not adduced any cogent evidence to show that suspension orders were issued by the Management in arbitrary, illegal or vindicative manner. As per his own pleadings and documents available on record, the claimant was posted at different branches of the Management Bank from time to time when suspension orders were issued either due to his misbehavior or due to unauthorized absence from duty and/or implication in police case. He was being paid subsistence allowance by the Management Bank as per rules. Separate and proper domestic/disciplinary enquiry was conducted in relation to the charges leveled against him. While imposing penalty upon him, period of his suspension was treated as not spent on duty. Perusal of the record shows that after his suspension in the year 1995, the claimant had in fact filed a civil Writ petition No.414/1993 before the Hon'ble High Court (a copy of which is Ex.MW1/W-3 in ID No.27/2009), inter-alia with the prayers that four years period of his suspension be treated as period spent on duty and he may be:—

(a) Paid entire wages for the period of suspension after deducting the amount paid to him as subsistence allowance;

(b) Allowed yearly increments which became due to him in the scale applicable to him in the year 1985 and thereafter;

(c) Paid bonus since the year 1981;

(d) granted on turn promotion as teller from due date and paid special allowance for that post from the date of promotion;

(e) ……

(f) Be allowed leave travel concession for all the time slabs since 24.10.85; and

(g) Allowed 18% interest on the amount found due to him and withheld by the bank from the respective date till date or payment.

17. In view of the statement made by Shri Jagat Arora that the workman shall be paid all the benefits accrued to him during the period he remained in service i.e. from 1985 to 1989, the said writ petition was disposed of vide order dated 3/3/1994 (Ex.MW1/W-14 in ID No.27/2009). Thereafter the claimant/workman herein filed Contempt application bearing CCP No.131/1995 and CM 1525/1999 with respect to the orders dated 3/3/94 passed in CWP No. before Hon'ble High Court. In response to the said contempt petition, the Management filed counter affidavit Ex.MW1/2 denying the allegations of the workman and categorically stating that the Management bank has complied with the order and had paid various amount to the workman, as detailed hereinbelow :-

(i)	October, 1983 to August, 1989 credited in SB A/C No.22997 on 3-6-94	Rs.37,731-21
(ii)	November, 92 to Nov., 95 credited in OD /C NO.3906 on 25-7-95	Rs,12,099-19
(iii)	Nov., 92 to Nov.95 credited in on A/c No,.3906 on 11-8-95	Rs 4,492-49
(iv)	September, 1989 to Nov., 94 – difference on account of increments to be added in the salary. Credited in SB No. 22997 on 29-10-95	Rs. 83,204-58
(v)	Bonus for 1985-89 credited in SB A/c No.22997 on 17-10-95	Rs.5,643-44

Perusal of the order dated 5/10/1994 (Ex.MW1/4 in instant ID No.2017) shows that the workman/claimant herein had also filed an additional affidavit before Hon'ble High Court, contending inter-alia that although he had been paid the amount as stated in the counter affidavit of the Management Bank, he is also entitled to the benefit of the claim as mentioned in para 3(a) to 3(d) of his additional affidavit, vis-à-vis grant of annual increment of Rs.55/-, officiating allowance for the post of Teller/Assistant besides payment of leave fare concession benefit and grant/credit of privilege leave, sick leave and casual leave for the relevant period of his suspension. But the same were found to be baseless by the Hon'ble High Court vide order dated 5/10/1999 (Ex.MW1/4). It seems that the claimant/workman has abused the process of law and instead of restricting his claim, he has re-agitated all his previous claims despite the fact that the Hon'ble High Court has already declined his request in respect of number of claims.

18. It is worthwhile to mention here that vide aforesaid order dated 5/10/1999, it was specifically held by Hon'ble High Court that since the disciplinary authority inflicted a punishment of stoppage of one increment with cumulative effect, the claimant/petitioner was not entitled to arrears of annual increment, since the said order had not been set aside by any court of law. Similarly, his claim for grant of special allowance of Teller/Special Assistant, Hon'ble High Court had held that since the petitioner admittedly did not perform any duties of officiating in the post of Teller/Assistant Head Cashier, he was not entitled to such claim. As regards his claim for payment of leave fare concession benefit, it was held that under the rules unless an employee actually undertakes such journey, the same can not be paid and hence he was not entitled for the same. As it was stated by the Management Bank that for the relevant period, the privilege leave, sick leave and casual leave were credited to the account of the petitioner/workman herein, his claim was not tenable. Under these circumstances, this Tribunal has no hesitation to hold that the claimant/workman is not entitled to any of the claims as made by him and reflected in para 15(a) to (g) above.

19. As regards workman's claims (h) to (j) viz. to and fro conveyance expenses, costs of this litigation and award of interest are concerned, the workman/claimant in para 89 of his claim petition dated 15/7/2009 (file of ID No.27/09) has stated that he be paid to and fro conveyance expenses of auto fare on various dates which will be fixed in this case in future. It is worthwhile to mention here that in his affidavit Ex.WW1/A (dated 4/5/2010) as well as affidavit Ex.WW1/B (dated 28/8/2017) filed before this Court, the claimant/workman has neither uttered any word to press this part of his claim, nor he filed any documents regarding the expenses incurred by him. However, in his written arguments, it has been stated that he wasted his time, money and energy in attending more than 30 dates and incurred expenses amounting

to Rs.8000/-. It is a matter of record that the workman/claimant was suspended four times during his service with the Management Bank and ultimately he was dismissed from service vide order dated 16/8/2007 on the basis of inquiry report with respect to his grave misconduct viz. embezzlement of amount of Rs.3000/- on 16-1-2006 while he was posted at Narina Vihar Branch of the Bank. An industrial dispute bearing ID No.26/2009 was raised by the workman and after appreciation of material available on record, my learned Predecessor passed an order dated 14/6/2010 on the preliminary issue regarding the legality and validity of domestic enquiry held by the Management against the workman/claimant and finally decided the reference vide Award dated 27/8/2010, thereby removal of claimant/workman was substituted into removal from service with superannuation benefit and without disqualification from future employment. The workman/claimant had preferred Writ Petition (C) No.8159/2011, which was dismissed vide order dated 13/5/2013 (a copy of same is Ex.MW1/1) holding that there was no infirmity in the impugned order dated 14/6/2010 as well as impugned award dated 27/8/2010 passed by the Industrial Tribunal and four weeks time was given to the Management Bank to comply with the award regarding payment of superannuation benefits. All these would show that the claimant/workman was not satisfied with the benefits paid to him by the Management Bank, he used all sorts of litigation either by way of industrial dispute or moving application/s under Section 33-C before the Tribunal time and again and approaching the Hon'ble High Court so as to satisfy his whims and fancies and in utter disregard to the rules and regulations to which he was governed, he made frivolous and flimsy claims time and again. There is nothing on record to suggest that the workman/claimant has been made to contest a lengthy litigation on account of violation of rules by the Management. On the contrary, it is the workman/claimant who himself is trying to re-agitate the issues which are already settled and is trying to take advantage of his own wrongs which can not be allowed under law. Accordingly this Tribunal is of the considered opinion that the workman/claimant is also not entitled to any amount under claims (h) and (i) being devoid of any merits.

20. Having regard to the peculiar facts and circumstances of the case, this Tribunal is of the firm view that the claimant/workman herein is not entitled to any relief whatsoever. The reference petition is decided accordingly and parties are directed to bear their own costs.

Date : 11.04.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1308.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 19/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-41011/81/2015-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1308.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 24.08.2018.

[No. L-41011/81/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 18th July, 2018

Reference: (CGITA) No. 19/2016

1. The Sr. Divisional Engineer(West),
Western Railway,
Asarwa, Nr. Chamunda Bridge,
Ahmedabad (Gujarat)

2. The Assistant Divisional Engineer(NW),
Western Railway,
Nr. Railway Station, Kalupur,
Ahmedabad (Gujarat)

3. The Permanent Way Supervisor,
Unit No. 1, Western Railway,
Sabarmati,
Ahmedabad (Gujarat) …First Party

V/s

The Joint Divisional Secretary,
Paschim Railway Karmachari Parishad,
28/B, Narayan Park,
Behind Chandkheda Railway Station, Sabarmati,
Ahmedabad (Gujarat) – 382470 …Second Party

For the First Party : None

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/81/2015–IR(B-I) dated 08.02.2016 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand of Joint Divisional Secretary, Paschim Railway Karmachari Parishad, Ahmedabad against the Sr. Divisional Engineer (West), Western Railway, Ahmedabad to grant authorized leave on 27.07.2013 and disbursed one day salary to Shri Vivek Kumar, Trackman, Unit No. 1, Sabarmati, Ahmedabad is legal, fair and justified? If so, then what relief the workman, Shri Vivek Kumar is entitled to?"

1. The reference dates back to 08.02.2016 and received on 16.02.2016 from Ministry of Labour and Employment, New Delhi for adjudication. All the parties issued notice Ex. 2 on 07.05.2018 to appear on 11.06.2018 to file their claims.

2. Today on 18.07.2018, Shri R.S. Sisodiya, the Joint Divisional Secretary of the second party union Paschim Railway Karmachari Parishad, Ahmedabad, did not press the reference.

3. Hence the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1309.ख़औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ग्रामीण बैंक ऑफ आर्यवार्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 23/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-12025/01/2018-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1309.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Gramin Bank of Aryavart and their workmen, received by the Central Government on 24.08.2018.

[No. L-12025/01/2018-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 23 of 2014

Between :

R.P Singh,
State Executive Committee Member,
U.P Bank Workers Organization,
3/13 Mathura Nagar,
Aligarh-202001

Vs

J.S. Ravi Kumar
Chairman,
Gramin Bank of Aryavart,
A-2/46, Vijay Khand,
Gomti Nagar,
Lucknow.

AWARD

1. This is an application under section 33-A of Industrial Disputes Act, 1947, moved by one Sri R P Singh in his capacity as Executive Member of U.P. Bank workers Organization stating that an industrial dispute no. 58/12 is pending before this tribunal regarding grant of regular pay to the part time sweeper under the provisions of bipartite settlement. It is also alleged that all the part time sweepers were being paid their wages on monthly basis by the competent authority of the bank. The competent authority of the bank fixed the pay of part time sweepers working in urban branches of the bank at Rs.800/- per month situate at Aligarh and Agra and for other urban branches Rs.700/- per month and for rural branches Rs.600/- per month of District Agra and Aligarh and likewise in other rural branches Rs.500/- per month. The management bank vide circular dated 06.02.14 has converted the monthly wages given to the part time sweepers into daily wages arbitrarily. In this way the management has totally changed the service conditions applicable to part time sweepers. In this way the management has breached the provisions of section 33-A of the Act, for which it is prayed by the union that the concerned authority should be punished according to the provisions of the Act.

2. Management has denied the claim of the union stating that the present application is not maintainable as the service conditions as are applicable to the regular and permanent employees of the bank are not applicable on the part time sweepers who are engaged on casual basis according to the need basis of the bank and are paid wages on daily rate basis. The relationship of employer and employees ceases between the workers and the management on the end of business hours of each working day. Therefore, it is absolutely wrong to allege that management has violated the service condition of part time sweepers. Application therefore, is liable to be rejected being devoid of merit.

3. In this case no rejoinder has been filed by the union nor any documentary or oral evidence has been filed from the side of the union. Considering the facts and circumstances of the case management also did not adduce any oral or documentary evidence in support of its case. Thus from the above it is evident that it is a case of no evidence, accordingly the application under section 33-A of the Act filed by the union is liable to be rejected for want of evidence.

4. Therefore, application under section 33-A of the Act filed by the union is rejected holding that the members of the union are not entitled for any relief as claimed by the union on their behalf.

5. Reference in the case is made as above against the union.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1310.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रुशिकुल्या ग्राम बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 18/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/107/2011-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1310.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Rushikulya Gramya Bank and their workmen, received by the Central Government on 24.08.2018.

[No. L-12012/107/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 18/2012

Date of Passing Award – 5th July, 2018

Between:

The Branch Manager,
Rushikulya Gramya Bank,
(At Present, Utkal Grameen Bank),
Chhatrapur Branch, Ganjam …1st Party-Management

(And)

Shri Dilip Kumar Swain,
S/o. Narahari Swain,
Nuasahi, Chhatrapur, Ganjam …2nd Party-Workman

Appearances:

M/s. Subrat Mishra, Advocate.	…	For the 1st Party-Management
M/s. Amar Sahoo, Advocate.	…	For the 2nd Party-Workman

AWARD

The Government of India in the Ministry of Labour by its letter No. L-12012/107/2011 (IR(B-I), dated 11.01.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as "The Act") have referred for adjudication of a dispute "whether the action of the management of Utkal Grameen Bank in terminating the services of Shri Dilip Kumar Swain w.e.f. 25.04.2011, without following the provisions of Section 25-F of I.D. Act is legal and justified? To what relief the workman is entitled?"

2. The case of the 2nd party-workman as emerged from his statement of claim is that he was employed by the 1st Party-Management Bank as Sweeper-cum-Messenger with effect from 19.04.1999. Though, he was engaged on daily wage basis his wages was paid in the end of the month. At the time of his initial engagement he was paid Rs. 30/- per day which was enhanced from time to time and on the date of refusal of employment his wage was fixed at Rs. 156/- per day. According to him he worked as Sweeper-cum-Messenger for the period from 19.04.1999 to 25.4.2011 and his engagement was continuous and uninterrupted for more than 240 days in a twelve months calendar year preceding to his retrenchment on 25.4.2011. Though, he worked for more than 240 days in each calendar year after his engagement on 19.04.1999, he was not paid any notice pay and retrenchment compensation before his retrenchment. The Management was making deposit of provident fund contribution with effect from April, 2010. Management paid bonus to the disputant in every year during the period of his engagement. Some others were also engaged like him on daily wage basis in other branches of the Management-Bank. When the Management-Bank did not take any interest in regularization of their service despite they had worked continuously for several years, they raised a dispute as a result of which the Management refused employment to him after 25.4.2011. Such refusal of employment amounted to retrenchment. It is the claim of the workman that the retrenchment being in violation of Section 25-F was illegal and unjustified. Since, the work of Sweeper and Messenger is permanent and perennial in nature in the Management-Bank, he should be reinstated with all back wages and service benefits.

3. The Management-Bank has resisted the claim of the workman taking a stand that there is a recruitment rule for appointment of staffs in the Management-Bank and the Branch Manager has no authority to give appointment to any-one except a person duly selected and recruited under the rule. Hence, there was no scope for the Branch Manager of the Management-Bank to employ or appoint the disputant as a Sweeper-cum-Messenger. The disputant was engaged intermittently on daily wage basis in exigencies and his engagement was never regular and continuous and for more than 240 days in any year or in twelve months calendar year preceding to his alleged retrenchment. Therefore, there was no requirement of complying the provisions of Section 25-F when the disputant was not given further engagement after 25.4.2011. Hence, Management has made a prayer for rejection of the statement of claim of the disputant workman.

4. On the aforesaid pleadings of the parties the following issues were framed for a just and proper adjudication of the case.

ISSUES

1. Whether the action of the management of Utkal Grameen Bank, in terminating the services of Shri Dilip Kumar Swain, w.e.f. 25.4.2011, without following the provisions of Section 25-F of the I.D. Act, is legal and justified?

2. To what relief the workman is entitled?

5. In order to establish his claim the disputant workman has examined as W.W.-1 and filed copy of the debit vouchers, copy of the order of the R.P.F.C., Berhampur, Copy of Manager's letter to H.O. for engagement of casual labourers, copy of letter dated 25.9.2009 regarding permission to engage casual labourers, copy of Bonus register, copy of payment of Bonus vide H.O. Circular dated 1.7.2009, copy of the letter to the Chairman for implementation of 9th Bipartite Settlement for 1/3rd wages to casual workers, copy of the letter dated 23.12.2010 regarding enhancement of daily wages of casual workers, copy of the letter dated 14.4.2011 regarding deduction of E.P.F. contribution of casual workers, copy of letter dated 16.4.2011 regarding withdrawal of permission, copy of the statement of working days of the workman from 1999 to 2011, copy of the R.P.F.C order regarding E.P.F. and copy of the information called under the R.T.I. Act, which are marked as Ext.-1 to Ext.-13. On the other hand the Management has examined the Manager (Administration) and relied on the documents like copy of the letter dated 9.3.2011 of Government of India, Ministry of Labour to the Chairman of the Bank and copy of the W.P.(C) No. 20631/2011 marked as Ext.-A & Ex.-B to refute the claim.

6. For the sake of convenience all the issue are taken for consideration jointly.

It is seen from the pleadings and evidence of the 1st Party-Management Bank that the Bank has no serious dispute to the claim of the disputant workman that he was engaged temporarily on 19.4.1999 on daily wage basis to work as Sweeper in the branch Bank of the Management at Chatrapur. It is not also disputed that his engagement as Sweeper was discontinued from 25.4.2011. Similarly, there is no serious controversy to the claim of the workman that his wage was fixed at Rs. 30/- per day at the time of his initial appointment which is enhanced from time to time and such daily wage was fixed at Rs. 156/- when he was allegedly refused engagement. The 1st Party-Management has not also seriously disputed the pleading and evidence of the workman that he was paid bonus in each year during the period of his employment and on his complaint the Management started making payment towards E.P.F. contribution. However, the Management has denied the engagement of the workman for more than 240 days continuously in any year or in twelve calendar months preceding to his alleged disengagement. In that view of the matter the initial burden of proof is on the disputant to show that he had completed 240 days of continuous service in a twelve calendar months preceding to his alleged disengagement as per the settled principles of the Apex Court. In this regard the workman has relied on his oral testimony as well as documents exhibited by him. It is seen from the record that documents filed by the disputant workman are copies of certain official letters belonging to the Management which are marked exhibits during hearing without any objection on the part of the Management. On a close reading of those documents it is apparent that as per letter issued in the year 2009 (Ext.-4) the Manager of the Management Bank was authorized to engage one daily wage labourer in the branch depending upon the work load of the Branch. It appears from Ext.-2, which is a copy of an interim order of Assessing Officer, Compliance-IV, RPFC passed under section 7-A that the disputant workman was a casual employee of the Management-Bank for which the Bank was directed to make deposit towards P.F. contribution of Shri Swain. That apart, Ext.-11, which is a statement showing wages paid to Shri Swain towards his engagement in between 1999 to 2011, reveals that the disputant was engaged more than 240 days continuously in a twelve calendar months preceding to his retrenchment as enumerated in Section 25-B of the Act. These documents are not seriously challenged by the Management-Bank. Thus, if oral assertions of the disputant workman is taken into consideration along with the contents of Ext.-2 and 11 it can be safely inferred that the disputant was in continuous service of 240 days in the Management-Bank as defined under section 25-B of the Act. Hence, the burden shifts to the Management to refute the contention of the disputant workman in this regard. But, the Management has not produced any record or register before the Tribunal for its perusal to show that the disputant was never engaged for 240 days in a year. The 1st Party-Management has not taken any specific stand that the status of the 2nd party-workman was, at best, that of a daily wager by virtue of payment of wage to him at the end of each day and as such his employment deemed to be ceased

automatically at the end of each day and the Bank was under no legal obligation to employ him on the next day. Rather, it is emerging from the evidence of the parties that the disputant was paid wages in the end of the month. He was paid Bonus. If the disputant is said to have received daily wages from the Management-Bank for his daily engagement, the official records or vouchers could have been produced by the Management to show that at the end of the day his engagement was completed and he was paid wages. The Management was not having any legal obligation to engage him further. The registers/record of the Bank could have disclosed the actual days for which the disputant was engaged in a calendar year. Non-production of such official records will definitely have an adverse impact on the claim of the Management. Though, M.W.-1 has denied continuous engagement of the disputant for 240 days in a year, the same is not supported by any document. Moreover, it is emerged from the cross examination of the witness that he was not posted in the Management-Bank when the disputant was engaged on daily wage basis. His statement in his evidence was based on official records. Keeping in view the totality of the evidence advanced by the parties and discussions made above it can be safely held that the disputant worked for the 1st Party-Management for the period from 19.4.1999 to 25.4.2011 i.e. for more than 11 years and he worked for 240 days in each year and his engagement was continuous and uninterrupted for 240 days in twelve months calendar year preceding to his alleged disengagement.

7. The disputant has claimed that he was not given any notice or one month wages in lieu of notice and retrenchment compensation before his disengagement. The Management has not taken any stand in this regard. Rather it is emerging from its evidence that provisions of Section 25-F was not complied with when the disputant was refused engagement. Law is well settled that retrenchment of a daily wage workman in violation of Section 25-F is not also sustainable in the eye of law. In that view of the matter the disengagement of the disputant with effect from 25.4.2011 amounted to retrenchment and such retrenchment without notice-pay and retrenchment compensation is undoubtedly illegal and unjustified.

8. The next question for consideration is what relief to which the disputant workman is entitled. It is seen from the evidence and pleadings of the parties that the disputant was not given appointment against any permanent or sanctioned post. He was engaged as a casual labourer on daily wage basis. As per Ext.-10 a casual labour can only be engaged in exigencies depending upon the work load of the branch Bank. No specific pleadings or evidence is advanced by the disputant to show that any sanctioned or permanent post of Sweeper-cum-Messenger is available with the Management-Bank and work of such Sweeper-cum-Messenger is done by a casual/daily wage labour. On the other hand it appears from the contents of Ext.-10 that the Branch Manager can engage a daily labour if there is more work load. Law is well settled that reinstatement with back wages is not automatic in all matters of illegal or unjustified retrenchment. Compensation in lieu of reinstatement can be awarded in suitable cases. The Tribunal or Court can award reinstatement or compensation depending upon the facts and circumstances of each case more particularly taking into consideration of the nature and period of employment, financial status of the employer, work load available with him and several other factors. Having regard to the facts and circumstances of the present case more particularly the nature of employment extended to the disputant workman a compensation of Rs. 1,50,000/- (rupees one lakh and fifty thousand only) would be just and appropriate award in this case.

9. Hence, the Management is directed to pay a compensation of Rs. 1,50,000/- (rupees one lakh and fifty thousand only) to the disputant workman for his illegal retrenchment on 25.4.2011 and the amount shall be paid within two months from the date of publication of the award failing which the disputant is entitled to simple interest of 8% per annum on the amount with effect from the date of this award till its payment.

10. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1311.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम/एस कैपिटल बिजनेस सिस्टम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 38/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-12011/04/2017-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1311.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2017) of the Central Government Industrial Tribunal-cum-Labour

Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of M/s. Capital Business Systems Limited and their workmen, received by the Central Government on 24.08.2018.

[No. L-12011/04/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 38/2017

No. L-12011/04/2017-IR(B-I), dated 16.05.2017

Date of Passing Order – 4th June, 2018

Between:

M/s. Capital Business Systems Limited,
30-B, Prahlad Market, Karol Bagh,
New Delhi – 110 005 …1st Party-Management

(And)

Shri Nokanath Samantaray & 6 Others,
S/o. Lingaraja Samantaray,
At./Po. Balakati (Ranjai Sahi),
P.S. Balianta, Dist. Khurda (Orissa),
Pin – 752 056 …2nd Party-Workmen

Appearances:

None … For the 1st Party-Management.

None … For the 2nd Party-Workmen

ORDER

Case is taken up for hearing. None appears on repeated calls. No step is also being taken by the parties. Perused the record. It is seen that despite notice being sent to the 2nd party-workmen by regd. post no statement of claim is filed by the 2nd party-workmen. In the meanwhile the case has already suffered more than four adjournments after sending of notice to the 2nd party-workmen. Hence, it appears that the 2nd party-workmen are not probably interested to prosecute the matter. In absence of the pleadings and evidence of the parties on the dispute under reference it is difficult on the part of the Tribunal to adjudicate the dispute. Hence, there being no alternative than to return the reference without its adjudication. Accordingly the case is disposed of without any award. Copy of the order be sent to the Ministry of Labour for their perusal and for necessary action at their end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1312.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ग्रामीण बैंक ऑफ आर्यवत्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 23/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-12025/01/2018-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1312.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Gramin Bank of Aryavart and their workmen, received by the Central Government on 24.08.2018.

[No. L-12025/01/2018-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 23 of 2016

Between :

The Executive Member,
U.P.Bank Worker's Organization,
3/13 Mathura Nagar,
Aligarh

And

General Manager,
Gramin Bank of Aryavart,
Lucknow.

Award U/s 33-A of I.D. Act.

1. The union on behalf of worker Ramendra Singh has alleged that an industrial dispute no. 63/14 with regard to the above worker is pending for his regularization in the service of the bank. The manager of Ehan Branch of the bank, District Hathras, deliberately knowing the fact that an industrial dispute is pending with regard to the worker in this tribunal had dispensed with the service of the worker on16.05.16, thereby made a material change in the service condition of the worker without obtaining permission of this Tribunal. Thus the management has badly breached the provisions of section 33-A of the Act. As such the union has prayed that suitable legal action be initiated against the branch manager of Ehan Branch of the Bank.

2. Management filed written statement wherein it is denied that the worker was ever appointed by the bank in any capacity, he was never paid any wages, the engagement of the worker was for short period in a day to sweep and clean the branch for which he was paid through voucher, he never performed any regular and permanent work of messenger in the bank, bank has never terminated the service of the bank therefore, question of making material change in the service condition of the worker or breach of the provisions of section 33-A of the Act, does not arise. The application under section 33-A of the Act, moved by the union is nothing but misuse and abuse of the process of law. It is therefore, prayed that the application of the union under the circumstances of the case is liable to be rejected being baseless and also being devoid of merit.

3. It is pertinent to mention that I.D. Case No.63 of 14 pertains to worker Ramendra Singh which was decided by this tribunal on 16.07.18 against the worker holding that worker is not entitled for any relief, therefore, from this point of view and also considering the facts narrated in that case it is held that it cannot be said that the management has breached the provisions of section 33-A of the Act or service conditions of the worker has been changed because when it was found that the worker was engaged on casual basis as such service condition applicable to the regular and permanent employees of the bank are not applicable on therefore, when no service conditions were applicable on the worker it is absolutely futile to allege by the union that the bank changed the service condition of the worker.

4. Even otherwise no evidence either oral or documentary has been filed by the Union in support of their claim, therefore, it is a case of no evidence as also management has not adduced any evidence in the case.

5. Therefore, considering the facts stated above it is held that the application of the union u/s 33-A of the Act is liable to be rejected being devoid of merit holding that the union is not entitled for any relief as claimed by it in its application. Accordingly application is rejected.

6. Award in the case is made as above.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1313.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रुशिकुल्या ग्राम बैंक के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 10/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/110/2011-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1313.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Rushikulya Gramya Bank and their workmen, received by the Central Government on 24.08.2018.

[No. L-12012/110/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 10/2012

Date of Passing Award – 4th July, 2018

Between:

The Branch Manager,
Rushikulya Gramya Bank,
(At Present, Utkal Grameen Bank),
Court Peta Branch,
Berhampur, (Ganjam) …1st Party-Management

(And)

Shri Adikanda Nayak,
S/o. Late Ganapati Nayak,
Kammapali, Ram Nagar, 2nd Lane,
Berhampur (Ganjam) …2nd Party-Workman

Appearances:

M/s. Subrat Mishra, Advocate.	…	For the 1st Party-Management.
M/s. Amar Sahoo, Advocate.	…	For the 2nd Party-Workman.

AWARD

The Government of India in the Ministry of Labour by its letter No. L-12012/110/2011 (IR(B-I), dated 11.01.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as "The Act") have referred for adjudication of a dispute "whether the action of the management of Utkal Grameen Bank in terminating the services of Shri Adhikada Nayak w.e.f. 27.04.2011, without following the provisions of Section 25-F of I.D. Act is legal and justified? To what relief the workman is entitled?"

2. The case of the 2nd party-workman as emerged from his statement of claim is that he was employed by the 1st Party-Management Bank as Sweeper-cum-Messenger with effect from 07.02.1999. Though, he was engaged on daily wage basis his wages was paid in the end of the month. At the time of his initial engagement he was paid Rs. 30/- per day

which was enhanced from time to time and on the date of refusal of employment his wage was fixed at Rs. 156/- per day. According to him he worked as Sweeper-cum-Messenger for the period from 07.02.1999 to 27.4.2011 and his engagement was continuous and uninterrupted for more than 240 days in a twelve months calendar year preceding to his retrenchment on 27.4.2011. Though, he worked for more than 240 days in each calendar year after his engagement on 7.2.1999, he was not paid any notice pay and retrenchment compensation before his retrenchment. The Management was making deposit of provident fund contribution with effect from April, 2010. Management paid bonus to the disputant in every year during the period of his engagement. Some others were also engaged like him on daily wage basis in other branches of the Management-Bank. When the Management-Bank did not take any interest in regularization of their service despite they had worked continuously for several years, they raised a dispute as a result of which the Management refused employment to him all of a sudden after 27.4.2011. Such refusal of employment amounted to retrenchment. It is the claim of the workman that the retrenchment being in violation of Section 25-F was illegal and unjustified. Since, the work of Sweeper and Messenger is permanent and perennial in nature in the Management-Bank, he should be reinstated with all back wages and service benefits.

3. The Management-Bank has resisted the claim of the workman taking a stand that there is a recruitment rule for appointment of staffs in the Management-Bank and the Branch Manager has no authority to give appointment to any-one except a person recruited under the rule. Hence, there was no scope for the Branch Manager of the Management-Bank to employ or appoint the disputant as a Sweeper-cum-Messenger. The disputant was engaged intermittently on daily wage basis in exigencies and his engagement was never regular and continuous and for more than 240 days in any year or in twelve months calendar year preceding to his alleged retrenchment. Therefore, there was no requirement of complying the provisions of Section 25-F when the disputant was not given further engagement after 27.4.2011. Hence, Management has made a prayer for rejection of the statement of claim of the disputant workman.

4. On the aforesaid pleadings of the parties the following issues were framed for a just and proper adjudication of the case.

ISSUES

1. Whether the action of the Management of Utkal Grameen Bank in terminating the services of Shri Adhikanda Nayak w.e.f. 27.4.2011 without following the provisions of Section 25-F of the I.D. Act is legal and justified?

2. To what relief the workman is entitled?

5. In order to establish his claim the disputant workman has examined as W.W.-1 and filed copy of permission order dated 6.2.2009 to engage casual labour in branches, copy of information under E.P.F. Act on wages paid from 1.8.2004 to 31.3.2010, copy of letter dated 14.9.2010 on payment of Bonus to casual workers, copy of office order dated 14.3.2011 of the R.P.F.C., Berhampur, copy of the letter of AIRRBEA to the Chairman for enhancement of wages, copy of office order dated 23.12.2010 regarding enhancement of daily wages, copy of order dated 26.3.2012 on revision of wages, copy of order dated 18.3.2013 of R.P.F.C., Bhubaneswar which are marked as Ext.-1 to Ext.-8. On the other hand the Management has examined its Manager (Administration) and relied on the official circulars like copy of the letter dated 9.3.2011 of the Govt. of India, Ministry of Labour to the Chairman of the Bank and the copy of the W.P.(C) No. 20631/2011 marked as Ext.-A and Ext.-B to refute the claim.

6. For the sake of convenience all the issues are taken for consideration jointly.

It is seen from the pleadings and evidence of the parties that there is no serious dispute to the claim of the disputant workman that he was engaged temporarily on 7.2.1999 on daily wage basis to work as Sweeper-cum-Messenger in the 1st Party-Management Bank. Similarly, it is not disputed by the Management-Bank that his engagement as Sweeper-cum-Messenger was discontinued from 27.4.2011. Similarly, there is no serious controversy to the claim of the workman that his wage was fixed at Rs. 30/- per day at the time of his initial appointment which is enhanced from time to time and such daily wage was fixed at Rs. 156/- when he was refused engagement. The 1st Party-Management has not also seriously disputed the pleading and evidence of the workman that he was paid bonus in each year during the period of his employment and on his complaint the Management started making payment towards E.P.F. contribution. However, the Management has denied the engagement of the workman for more than 240 days continuously in any year or in twelve calendar months preceding to his alleged disengagement. In that view of the matter the initial burden of proof is on the disputant to show that he had completed 240 days of continuous service in a twelve calendar months preceding to his disengagement as per the settled principles of the Apex Court. In this regard the workman has relied on his oral testimony as well as documents exhibited by him. It is seen from the record that documents filed by the disputant workman are copies of certain official letters belonging to the Management and they were marked Ext. without any objection on the part of the Management. On a close reading of those documents it is apparent that as per letter issued in the year 2009 the Manager of the Management Bank was authorized to engage one daily wage labourer for six days in a week depending upon the work load of the Branch. It appears from Ext.-2, which is a figure/statistics furnished to the P.F. authority disclosing the amount paid to the disputant workman in every month towards his wages in between the year 1999 to 2010. Though number of days of engagement in each year is not

mentioned in Ext.-2, the claim of the disputant cannot be out-rightly rejected keeping in view the amount paid to him in each month towards his wages. That apart, Ext.-3, which is a format supposed to be furnished by the employer to the E.P.F. authority, reveals that in between April, 2009 to March, 2010 the disputant had worked and received wages for 244 days. These two documents are not seriously challenged by the Management-Bank. Thus, oral assertions of the disputant workman is taken into consideration along with the entries made in Ext.-2 and 3 it can be safely inferred that the disputant was in continuous service of 240 days in the Management-Bank as defined under section 25-B of the Act. Hence, the burden shifts to the Management to refute the contention of the disputant workman in this regard. But, the Management has not produced any record or register before the Tribunal for its perusal to show that the disputant was never engaged for 240 days in a year. When the disputant is stated to have received daily wages from the Management-Bank for his daily engagement, the official records or vouchers could have been produced by the Management to show the actual days for which the disputant was engaged in a calendar year. Non-production of such official records will definitely have an adverse impact on the claim of the Management. Though, M.W.-1 has denied continuous engagement of the disputant for 240 days in a year the same is not supported by any document. Moreover, it is emerged from the cross examination of the witness that he was not posted in the Management-Bank when the disputant was engaged on daily wage basis. His statement in his evidence was based on official records. Keeping in view the totality of the evidence advanced by the parties and discussions made above it can be safely held that the disputant worked for the 1st Party-Management for the period from 07.02.1999 to 27.4.2011 i.e. for more than 12 years and he worked for 240 days in each year and his engagement was continuous and uninterrupted for 240 days in twelve months calendar year preceding to his alleged disengagement.

7. The disputant has claimed that he was not given any notice or one month wages in lieu of notice and retrenchment compensation before his disengagement. The Management has not taken any stand in this regard. Rather it is emerging from its evidence that provisions of Section 25-F was not complied with when the disputant was refused engagement. Law is well settled that retrenchment of a daily wage workman in violation of Section 25-F is not also sustainable in the eye of law. In that view of the matter the disengagement of the disputant with effect from 27.4.2011 amounted to retrenchment and such retrenchment without notice-pay and retrenchment compensation is undoubtedly illegal and unjustified.

8. The next question for consideration is what relief to which the disputant workman is entitled. It is seen from the evidence and pleadings of the parties that the disputant was not given appointment against any permanent or sanctioned post. He was engaged as a casual labourer on daily wage basis. As per Ext.-2 a casual labour can only be engaged in exigencies depending upon the work load of the branch Bank. No specific pleadings or evidence is advanced by the disputant to show that any sanctioned or permanent post of Sweeper-cum-Messenger is not available with the Management-Bank and work of such Sweeper-cum-Messenger is done by a casual/daily wage labour. On the other hand it appears from the contents of Ext.-2 that the Branch Manager can engage a daily labour for six days in a week if there is more work load. Law is well settled that reinstatement with back wages is not automatic in all matters illegal or unjustified retrenchment. Compensation in lieu of reinstatement can be awarded in suitable cases. The Tribunal or Court can award reinstatement or compensation depending upon the facts and circumstances of each case more particularly taking into consideration of the nature and period of employment, financial status of the employer, work load available with him and several other factors. Having regard to the facts and circumstances of the present case more particularly the nature of employment extended to the disputant workman a compensation of Rs. 1,50,000/- (Rupees one lakh fifty thousand only) would be just and appropriate award in this case.

9. Hence, the Management is directed to pay a compensation of Rs. 1,50,000/- (Rupees one lakh fifty thousand only) to the disputant workman for his illegal retrenchment on 27.4.2011 and the amount shall be paid within two months from the date of publication of the award failing which the disputant is entitled to simple interest of 8% per annum on the amount with effect from the date of this award till its payment.

10. The reference is answered accordingly.

Dictated Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1314.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रुशिकुल्या ग्राम बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 11/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/109/2011-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1314.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Rushikulya Gramya Bank and their workmen, received by the Central Government on 24.08.2018.

[No. L-12012/109/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 11/2012

Date of Passing Award – 4th July, 2018

Between:

The Branch Manager,
Rushikulya Gramya Bank,
(At Present, Utkal Grameen Bank),
SNT Road Branch,
Berhampur, (Ganjam) …1st Party-Management

(And)

Shri Ranjit Kumar Choudhury,
S/o. Judhistira Choudhury, Ambedkar Nagar,
Langipalli, Berhampur (Ganjam) …2nd Party-Workman

Appearances:

M/s. Subrat Mishra, Advocate.	…	For the 1st Party-Management.
M/s. Amar Sahoo, Advocate.	…	For the 2nd Party-Workman.

AWARD

The Government of India in the Ministry of Labour by its letter No. L-12012/109/2011 IR(B-I), dated 11.01.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as "The Act") have referred for adjudication of a dispute "whether the action of the management of Utkal Grameen Bank in terminating the services of Shri Ranjit Kumar Choudhury w.e.f. 23.04.2011, without following the provisions of Section 25-F of I.D. Act, is legal and justified? To what relief the workman is entitled?"

2. The case of the 2nd party-workman as emerged from his statement of claim is that he was employed by the 1st Party-Management Bank as Sweeper-cum-Messenger with effect from 31.12.1998. Though, he was engaged on daily wage basis his wages was paid in the end of the month. At the time of his initial engagement he was paid Rs. 30/- per day which was enhanced from time to time and on the date of refusal of employment his wage was fixed at Rs. 156/- per day. According to him he worked as Sweeper-cum-Messenger for the period from 31.12.1998 to 23.4.2011 and his engagement was continuous and uninterrupted for more than 240 days in a twelve months calendar year preceding to his retrenchment on 23.4.2011. Though, he worked for more than 240 days in each calendar year after his engagement on 31.12.1998, he was not paid any notice pay and retrenchment compensation before his retrenchment. The Management was making deposit of provident fund contribution with effect from April, 2010. Management paid bonus to the disputant in every year during the period of his engagement. Some others were also engaged like him on daily wage basis in other branches of the Management-Bank. When the Management-Bank did not take any interest in regularization of their service despite they had worked continuously for several years, they raised a dispute as a result of which the Management refused employment to him after 23.4.2011. Such refusal of employment amounted to retrenchment. It is

the claim of the workman that the retrenchment being in violation of Section 25-F was illegal and unjustified. Since, the work of Sweeper and Messenger is permanent and perennial in nature in the Management-Bank, he should be reinstated with all back wages and service benefits.

3. The Management-Bank has resisted the claim of the workman taking a stand that there is a recruitment rule for appointment of staffs in the Management-Bank and the Branch Manager has no authority to give appointment to any-one except a person duly selected and recruited under the rule. Hence, there was no scope for the Branch Manager of the Management-Bank to employ or appoint the disputant as a Sweeper-cum-Messenger. The disputant was engaged intermittently on daily wage basis in exigencies and his engagement was never regular and continuous and for more than 240 days in any year or in twelve months calendar year preceding to his alleged retrenchment. Therefore, there was no requirement of complying the provisions of Section 25-F when the disputant was not given further engagement after 23.4.2011. Hence, Management has made a prayer for rejection of the statement of claim of the disputant workman.

4. On the aforesaid pleadings of the parties the following issues were framed for a just and proper adjudication of the case.

ISSUES

1. Whether the action of the Management of Utkal Grameen Bank in terminating the services of Shri Ranjit Kumar Choudhary w.e.f. 23.4.2011 without following the provisions of Section 25-F of the I.D. Act is legal and justified?

2. To what relief the workman is entitled?

5. In order to establish his claim the disputant workman has examined as W.W.-1 and filed copies of three debit vouchers, copy of order of R.P.F.C. dated 14.3.2011, copy of the letter of Branch Manager dated 29.7.2010, copy of the letter dated 28.1.2009 granting permission to engage one casual labour, copies of Bonus register (four sheets), copy of letter of Chairman dated 1.7.2009 for payment of Bonus to casual workers, copy of letter of AIRRBEA to the Chairman of the Bak for 1/3rd wages to casual workers, copy of letter of General Manager dated 23.12.2010 for enhancement of daily wages, copy of letter of General Manager dated 15.4.2011, copy of statement of working days of the workman from 2007 to 2011, copy of the order of R.P.F.C. dated 18.3.2013, copy of letter of Dy. C.L.C. (Central) Bhubaneswar dated 26.3.2012 which are marked as Ext.-01 to Ext.-12. On the other hand the Management has examined the Manager (Administration) and relied on the copy of letter dated 9.3.2011 of Government of India, Ministry of Labour to the Chairman of the Bank and coy of the W.P.(C) No. 20631/2011 marked as Ext.-1 and Ext.-2 to refute the claim.

6. For the sake of convenience all the issues are taken for consideration jointly.

It is well settled by the Hon'ble Apex Court in a catena of decisions including in the case of Range Forest Officer –versus- S.T. Hadimani (2002) ILLJ 1053 SC) that the burden of proof is on the claimant to show that he had worked for 240 days in a given year i.e. twelve months calendar year preceding to his termination/retrenchment of service. This burden is said to be discharged if the workman can establish the same by adducing cogent evidence, both oral and documentary. Undoubtedly in cases of termination of services of daily wage earner, there will be no letter of appointment or termination. There may not be any proof of payment of receipt of wages. In most cases the workman can call upon the employer to produce before the court the nominal muster roll for the given period, the wage register, the attendance register etc. Drawing of adverse inference would depend thereafter on facts of each case. Further, the decisions given by the Hon'ble Apex Court have also make it clear that mere affidavits or self serving statements by the workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. However, the given principle can be applicable depending upon facts and circumstances of each case. Coming to the case at hand it is seen that the disputant has filed some official correspondences, letters and statements belonging to the Management-bank which are marked Ext.-1 to 12 without any objection from the Management. On a close scrutiny of those documents (exhibits) it is seen that none of the document is sufficient to corroborate the testimony of the disputant workman that he worked continuously for 240 days in a calendar year or in any year in between the year 1998 t0 2011. Rather, it is apparent from Ext.-4 that Branch Managers are instructed not to engage a casual labour for more than four days in a week. Ext.-5 consisting of four sheets reveals that the disputant was paid Bonus in the year 2009 for his engagement of 126 days in that year. He was also paid Bonus in the year 2009-2010 for his engagement of 206 days. From the statement attached under Ext.-9 it is also clear that in between April 2010 to January, 2011 the engagement of the disputant was 164 days. Thus, there is want of sufficient documentary evidence to show that the disputant was engaged continuously for 240 days in a twelve months calendar year preceding to his retrenchment. On the other hand, it is crystal clear from the documents relied upon by the disputant workman that he was engaged continuously less than 200 days in a year and as such there was no requirement on the part of the Management to comply the provisions of Section 25-F for disengaging him from any work. The disputant was engaged on daily wage basis and he was a casual workman. He was never given appointment against any sanctioned or vacant post. He was not recruited in accordance with the recruitment rule of the Management-Bank. Therefore, the Bank has no legal obligation to continue him in service.

For the reasons discussed above the statement of claim filed by the disputant workman has no merit.

The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1315.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रुशिकुल्या ग्राम बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 14/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/104/2011-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1315.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Rushikulya Gramya Bank and their workmen, received by the Central Government on 24.08.2018.

[No. L-12012/104/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 14/2012

Date of Passing Award – 5th July, 2018

Between:

The Branch Manager,
Rushikulya Gramya Bank,
(At Present, Utkal Grameen Bank),
Polasara Branch,
Berhampur, (Ganjam) …1st Party-Management

(And)

Shri Kabiraj Subudhi,
S/o. Parasuram Subudhi,
At./Po. Chirikipada Sasana,
Via Polasara, Dist. Ganjam …2nd Party-Workman

Appearances:

M/s. Subrat Mishra, Advocate.	…	For the 1st Party-Management.
M/s. Amar Sahoo, Advocate.	…	For the 2nd Party-Workman.

AWARD

The Government of India in the Ministry of Labour by its letter No. L-12012/104/2011-IR(B-I), dated 11.01.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as "The Act") have referred for adjudication of a dispute "whether the action

of the management of Utkal Grameen Bank in terminating the services of Shri Kabiraj Subudhi w.e.f. 24.04.2011, without following the provisions of Section 25-F of I.D. Act is legal and justified? To what relief the workman is entitled?"

2. The case of the 2nd party-workman as emerged from his statement of claim is that he was employed by the 1st Party-Management Bank as Sweeper-cum-Messenger with effect from 01.04.2004. Though, he was engaged on daily wage basis his wages was paid in the end of the month. At the time of his initial engagement he was paid Rs. 30/- per day which was enhanced from time to time and on the date of refusal of employment his wage was fixed at Rs. 156/- per day. According to him he worked as Sweeper-cum-Messenger for the period from 01.04.2004 to 24.4.2011 and his engagement was continuous and uninterrupted for more than 240 days in a twelve months calendar year preceding to his retrenchment on 24.4.2011. Though, he worked for more than 240 days in each calendar year after his engagement on 01.04.2004, he was not paid any notice pay and retrenchment compensation before his retrenchment. The Management was making deposit of provident fund contribution with effect from April, 2010. Management paid bonus to the disputant in every year during the period of his engagement. Some others were also engaged like him on daily wage basis in other branches of the Management-Bank. When the Management-Bank did not take any interest in regularization of their service despite they had worked continuously for several years, they raised a dispute as a result of which the Management refused employment to him after 24.4.2011. Such refusal of employment amounted to retrenchment. It is the claim of the workman that the retrenchment being in violation of Section 25-F was illegal and unjustified. Since, the work of Sweeper and Messenger is permanent and perennial in nature in the Management-Bank, he should be reinstated with all back wages and service benefits.

3. The Management-Bank has resisted the claim of the workman taking a stand that there is a recruitment rule for appointment of staffs in the Management-Bank and the Branch Manager has no authority to give appointment to any-one except a person duly selected and recruited under the rule. Hence, there was no scope for the Branch Manager of the Management-Bank to employ or appoint the disputant as a Sweeper-cum-Messenger. The disputant was engaged intermittently on daily wage basis in exigencies and his engagement was never regular and continuous and for more than 240 days in any year or in twelve months calendar year preceding to his alleged retrenchment. Therefore, there was no requirement of complying the provisions of Section 25-F when the disputant was not given further engagement after 24.4.2011. Hence, Management has made a prayer for rejection of the statement of claim of the disputant workman.

4. On the aforesaid pleadings of the parties the following issues were framed for a just and proper adjudication of the case.

ISSUES

1. Whether the action of the management of Utkal Gramin Bank in terminating the services of Shri Kabiraj Subudhi w.e.f. 24.4.2011 without following the provisions of Section 25-F of I.D. Act is legal and justified?

2. To what relief the workman is entitled?

5. In order to establish his claim the disputant workman has examined as W.W.-1 and filed copy of letter dated 23.5.209 of the Branch Manager to the Chairman of the Bank, copy of Form C & D on bonus paid to the workman and copy of statement on payment of bonus to the workman, copy of circular dated 20.9.2011, copy of another circular dated 27.9.2012, copy of accounts ledger report from 1.4.2011 to 6.11.2012, copy of letter number 218, dated 8.11.2012, copy of statement on engagement of casual labourers from 1.4.2010, copy of circular No. 34, dated 21.8.2010, copy of letter dated 18.2.2011 and copy of letter dated 16.4.2011, copy of circular dated 15.4.2011, copy of letter number 298 for indent of stationary, copy of order dated 14.3.2011 of R.P.F.C. and copy of circular No. 85 dated 23.12.2010 which are marked as Ext.-1 to Ext.-14. On the other hand the Management has examined its Manager (Administration) and relied on the official circulars like copy of the letter dated 9.3.2011 of the Govt. of India, Ministry of Labour to the Chairman of the Bank and copy of the W.P.(C) No. 20631/2011 marked as Ext.-A and Ext.-B to refute the claim.

6. For the sake of convenience all the issues are taken for consideration jointly.

It is seen from the pleadings and evidence of the Management-Bank that it is the stand of the Management that disputant workman was engaged as a part time sweeper on daily wage basis and such engagement was intermittent and at the time of need. It is not disputed by the Management-Bank that his engagement was discontinued from 24.4.2011. Similarly, there is no serious controversy to the claim of the workman that his wage was fixed at Rs. 30/- per day at the time of his initial appointment which is enhanced from time to time and such daily wage was fixed at Rs. 156/- when he was allegedly refused engagement. The 1st Party-Management has not also seriously disputed the pleading and evidence of the workman that he was paid bonus in each year during the period of his employment and on his complaint the Management started making payment towards E.P.F. contribution. However, the Management has denied the engagement of the workman for more than 240 days continuously in any year or in twelve calendar months preceding to his alleged disengagement. In that view of the matter the initial burden of proof is on the disputant to show that he had completed 240 days of continuous service in a twelve calendar months preceding to his alleged disengagement as per the

settled principles of the Apex Court. In this regard the workman has relied on his oral testimony as well as documents exhibited by him. It is seen from the record that documents filed by the disputant workman are copies of certain official letters and correspondences belonging to the Management which are marked as exhibits during hearing without any objection on the part of the Management. Some of these documents are related to the statement in regard to days of engagement of the disputant in the Bank as a daily wager. On close reading of those documents more particularly Ext.-7 statement showing engagement or casual labours at different branches in month-wise from 1.4.2010 onwards it is found that the disputant was engaged for 243 days in between April, 2010 to January, 2011. There is no serious dispute to the fact that, the Branch Manager of the Management-Bank was authorized to engage a daily wager in case of exigencies depending upon the work load of the Branch. It appears from the figure/statistics in regard to engagement of daily wagers in different branches under Ext.-7 and other connecting papers it is clearly coming forth that the disputant was engaged by the Management-Bank on daily wage basis in between 2004 to 2010 and his such engagement was continuous for more than 240 days in a twelve months calendar year preceding to his alleged disengagement on 24.4.2011. These documents are not seriously challenged by the Management-Bank. Thus, if oral assertions of the disputant workman is taken into consideration along with the entries made in Ext.-7 it can be safely inferred that the disputant was in continuous service of 240 days in the Management-Bank as defined under section 25-B of the Act. Hence, the burden shifts to the Management to refute the contention of the disputant workman in this regard. But, the Management has not produced any record or register before the Tribunal for its perusal to show that the disputant was never engaged for 240 days in a year. When the disputant is stated to have received daily wages from the Management-Bank for his daily engagement, the official records or vouchers could have been produced by the Management to show the actual days for which the disputant was engaged in a calendar year. Non-production of such official records will definitely have an adverse impact on the claim of the Management. Though, M.W.-1 has denied continuous engagement of the disputant for 240 days in a year, the same is not supported by any document. Moreover, it is emerged from the cross examination of the witness that he was not posted in the Management-Bank when the disputant was engaged on daily wage basis. His statement in his evidence was based on official records. Keeping in view the totality of the evidence advanced by the parties and discussions made above it can be safely held that the disputant worked for the 1st Party-Management for the period from 01.04.2004 to 24.4.2011 i.e. for more than seven years and he worked for 240 days in each year and his engagement was continuous and uninterrupted for 240 days in twelve months calendar year preceding to his alleged disengagement.

7. The disputant has claimed that he was not given any notice or one month wages in lieu of notice and retrenchment compensation before his disengagement. The Management has not taken any stand in this regard. Rather it is emerging from its evidence that provisions of Section 25-F was not complied with when the disputant was refused engagement. Law is well settled that retrenchment of a daily wage workman in violation of Section 25-F is not also sustainable in the eye of law. In that view of the matter the disengagement of the disputant with effect from 24.4.2011 amounted to retrenchment and such retrenchment without notice-pay and retrenchment compensation is undoubtedly illegal and unjustified.

8. The next question for consideration is what relief to which the disputant workman is entitled. It is seen from the evidence and pleadings of the parties that the disputant was not given appointment against any permanent or sanctioned post. He was engaged as a casual labourer on daily wage basis. As per Ext.-8 a casual labour can only be engaged in exigencies depending upon the work load of the branch Bank. No specific pleadings or evidence is advanced by the disputant to show that any sanctioned or permanent post of Sweeper-cum-Messenger is available with the Management-Bank and work of such Sweeper-cum-Messenger is done by a casual/daily wage labour. On the other hand it appears from the contents of Ext.-9 that the Branch Manager can engage a daily labour for six days in a week if there is more work load. Law is well settled that reinstatement with back wages is not automatic in all matters of illegal or unjustified retrenchment. Compensation in lieu of reinstatement can be awarded in suitable cases. The Tribunal or Court can award reinstatement or compensation depending upon the facts and circumstances of each case more particularly taking into consideration of the nature and period of employment, financial status of the employer, work load available with him and several other factors. Having regard to the facts and circumstances of the present case more particularly the nature of employment extended to the disputant workman a compensation of Rs. 1,50,000/- (Rupees one lakh and fifty thousand only) would be just and appropriate award in this case.

9. Hence, the Management is directed to pay a compensation of Rs. 1,50,000/- (rupees one lakh and fifty thousand only) to the disputant workman for his illegal retrenchment on 24.4.2011 and the amount shall be paid within two months from the date of publication of the award failing which the disputant is entitled to simple interest of 8% per annum on the amount with effect from the date of this award till its payment.

The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1316.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रुशिकुल्या ग्राम बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 15/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/105/2011-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1316.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Rushikulya Gramya Bank and their workmen, received by the Central Government on 24.08.2018.

[No. L-12012/105/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 15/2012

Date of Passing Award – 4th July, 2018

Between:

The Branch Manager,
Rushikulya Gramya Bank,
(At Present, Utkal Grameen Bank),
Bhanja Nagar Branch (Evening)
Berhampur (Ganjam) …1st Party-Management

(And)

Shri Santosh Kumar,
S/o. Surendra Padhi,
At. Lal Singh Gola Padara Sahi,
Bhanja Nagar, Ganjam …2nd Party-Workman

Appearances:

M/s. Subrat Mishra, Advocate.	…	For the 1st Party-Management.
M/s. Amar Sahoo, Advocate.	…	For the 2nd Party-Workman.

AWARD

The Government of India in the Ministry of Labour by its letter No. L-12012/105/2011 IR(B-I), dated 11.01.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as "The Act") have referred for adjudication of a dispute "whether the action of the management of Utkal Grameen Bank in terminating the services of Shri S.K. Padhi w.e.f. 25.04.2011, without following the provisions of Section 25-F of I.D. Act is legal and justified? To what relief the workman is entitled?"

2. The case of the 2nd party-workman as emerged from his statement of claim is that he was employed by the 1st Party-Management Bank as Sweeper-cum-Messenger with effect from 14.06.2004. Though, he was engaged on daily wage basis his wages was paid in the end of the month. At the time of his initial engagement he was paid Rs. 30/- per day which was enhanced from time to time and on the date of refusal of employment his wage was fixed at Rs. 156/- per day.

According to him he worked as Sweeper-cum-Messenger for the period from 14.06.2004 to 25.4.2011 and his engagement was continuous and uninterrupted for more than 240 days in a twelve months calendar year preceding to his retrenchment on 25.4.2011. Though, he worked for more than 240 days in each calendar year after his engagement on 14.06.2004, he was not paid any notice pay and retrenchment compensation before his retrenchment. The Management was making deposit of provident fund contribution with effect from April, 2010. Management paid bonus to the disputant in every year during the period of his engagement. Some others were also engaged like him on daily wage basis in other branches of the Management-Bank. When the Management-Bank did not take any interest in regularization of their service despite they had worked continuously for several years, they raised a dispute as a result of which the Management refused employment to him after 25.4.2011. Such refusal of employment amounted to retrenchment. It is the claim of the workman that the retrenchment being in violation of Section 25-F was illegal and unjustified. Since, the work of Sweeper and Messenger is permanent and perennial in nature in the Management-Bank, he should be reinstated with all back wages and service benefits.

3. The Management-Bank has resisted the claim of the workman taking a stand that there is a recruitment rule for appointment of staffs in the Management-Bank and the Branch Manager has no authority to give appointment to any-one except a person duly selected and recruited under the rule. Hence, there was no scope for the Branch Manager of the Management-Bank to employ or appoint the disputant as a Sweeper-cum-Messenger. The disputant was engaged intermittently on daily wage basis in exigencies and his engagement was never regular and continuous and for more than 240 days in any year or in twelve months calendar year preceding to his alleged retrenchment. Therefore, there was no requirement of complying the provisions of Section 25-F when the disputant was not given further engagement after 25.4.2011. Hence, Management has made a prayer for rejection of the statement of claim of the disputant workman.

4. On the aforesaid pleadings of the parties the following issues were framed for a just and proper adjudication of the case.

I S S U E S

1. Whether the action of the management of Utkal Grameen Bank, in terminating the services of Shri S.K. Padhi, w.e.f. 25.4.2011, without following the provisions of Section 25-F of the I.D. Act, is legal and justified?

2. To what relief the workman is entitled?

5. In order to establish his claim the disputant workman has examined as W.W.-1 and filed copy of letter dated 14.5.2009, copy of statement of engagement of casual labours dated 28.2.2011, copy of circular dated 10.4.2011 on engagement of casual labour, copy of letter dated 23.12.2010 on enhancement of wages, copy of Bank circular dated 01.07.2009, copy of tabulation on the payment of Bonus to the casual workers, copy of the statement dated 18.07.2011 showing the engagement of casual labourers, copy of letter dated 24.09.2012 on the information obtained under the R.T.I. Act, 2005, copy of the interim order of relief issued by the R.P.F.C. dated 28.2.2011, copy of order dated 26.3.2012 on enhancement of wages, copy of letter dated 6.8.2010 issued by AIRRBEA to the Chairman of the Bank, copy of another letter issued by AIRRBEA to the Chairman of the Bank and copy of the letter dated 7.10.2013 on the information obtained under the R.T.I. Act, 2005 which are marked as Ext.-01 to Ext.-13. On the other hand the Management has examined the Manager (Administration) and relied the copy of letter dated 9.3.2011 of Government of India, Ministry of Labour to the Chairman of the Bank and copy of the W.P.(C) No. 20631/2011 marked as Ext.-A to Ext.-B to refute the claim.

6. For the sake of convenience all the issues are taken for consideration jointly.

It is seen from the pleadings and evidence of the 1st Party-Management Bank that the Bank has no serious dispute to the claim of the disputant workman that he was engaged temporarily on 01.01.1997 on daily wage basis to work as Sweeper in the branch Bank of the Management at Bhanjanagar Evening Branch. It is not also disputed that his engagement as Sweeper was discontinued from 25.4.2011. Similarly, there is no serious controversy to the claim of the workman that his wage was fixed at Rs. 30/- per day at the time of his initial appointment which is enhanced from time to time and such daily wage was fixed at Rs. 156/- when he was allegedly refused engagement. The 1st Party-Management has not also seriously disputed the pleading and evidence of the workman that he was paid bonus in each year during the period of his employment and on his complaint the Management started making payment towards E.P.F. contribution. However, the Management has denied the engagement of the workman for more than 240 days continuously in any year or in twelve calendar months preceding to his alleged disengagement. In that view of the matter the initial burden of proof is on the disputant to show that he had completed 240 days of continuous service in a twelve calendar months preceding to his alleged disengagement as per the settled principles of the Apex Court. In this regard the workman has relied on his oral testimony as well as documents exhibited by him. It is seen from the record that documents filed by the disputant workman are copies of certain official letters belonging to the Management which are marked exhibits during hearing without any objection on the part of the Management. On a close reading of those documents it is apparent that the disputant was engaged in a regular manner as a daily wager by the Management branch Bank in between 14.6.2004 to 25.4.2011. He was paid Bonus in each Financial year. His engagement in the financial year 2007-08 and 2008-09 was

212 days and 276 days respectively. In Ext.-7 he was shown to have been engaged for more than 240 days in between April, 2010 to January, 2011. These documents are not seriously challenged by the Management-Bank. Thus, if oral assertions of the disputant workman is taken into consideration along with the contents of exhibits filed by the disputant workman it can be safely inferred that the disputant was in continuous service of 240 days in the Management-Bank as defined under section 25-B of the Act. Hence, the burden shifts to the Management to refute the contention of the disputant workman in this regard. But, the Management has not produced any record or register before the Tribunal for its perusal to show that the disputant was never engaged for 240 days in a year. The 1st Party-Management has not taken any specific stand that the status of the 2nd party-workman was, at best, that of a daily wager by virtue of payment of wage to him at the end of each day and as such his employment deemed to be ceased automatically at the end of each day and the Bank was under no legal obligation to employ him on the next day. Rather, it is emerging from the evidence of the parties that the disputant was paid wages in the end of the month. He was paid Bonus. If the disputant is said to have received daily wages from the Management-Bank for his daily engagement, the official records or vouchers could have been produced by the Management to show that at the end of the day his engagement was completed and he was paid wages. The Management was not having any legal obligation to engage him further. The registers/record of the Bank could have disclosed the actual days for which the disputant was engaged in a calendar year. Non-production of such official records will definitely have an adverse impact on the claim of the Management. Though, M.W.-1 has denied continuous engagement of the disputant for 240 days in a year, the same is not supported by any document. Moreover, it is emerged from the cross examination of the witness that he was not posted in the Management-Bank when the disputant was engaged on daily wage basis. His statement in his evidence was based on official records. Keeping in view the totality of the evidence advanced by the parties and discussions made above it can be safely held that the disputant worked for the 1st Party-Management for the period from 14.6.2004 to 25.4.2011 i.e. for more than six years and he worked for 240 days in each year and his engagement was continuous and uninterrupted for 240 days in twelve months calendar year preceding to his alleged disengagement.

7. The disputant has claimed that he was not given any notice or one month wages in lieu of notice and retrenchment compensation before his disengagement. The Management has not taken any stand in this regard. Rather it is emerging from its evidence that provisions of Section 25-F was not complied with when the disputant was refused engagement. Law is well settled that retrenchment of a daily wage workman in violation of Section 25-F is not also sustainable in the eye of law. In that view of the matter the disengagement of the disputant with effect from 25.4.2011 amounted to retrenchment and such retrenchment without notice-pay and retrenchment compensation is undoubtedly illegal and unjustified.

8. The next question for consideration is what relief to which the disputant workman is entitled. It is seen from the evidence and pleadings of the parties that the disputant was not given appointment against any permanent or sanctioned post. He was engaged as a casual labourer on daily wage basis. As per exhibits filed by the disputant workman casual labour can only be engaged in exigencies depending upon the work load of the branch Bank. No specific pleadings or evidence is advanced by the disputant to show that any sanctioned or permanent post of Sweeper-cum-Messenger is available with the Management-Bank and work of such Sweeper-cum-Messenger is done by a casual/daily wage labour. On the other hand it appears from the contents of exhibits that the Branch Manager can engage a daily labour if there is more work load. Law is well settled that reinstatement with back wages is not automatic in all matters of illegal or unjustified retrenchment. Compensation in lieu of reinstatement can be awarded in suitable cases. The Tribunal or Court can award reinstatement or compensation depending upon the facts and circumstances of each case more particularly taking into consideration of the nature and period of employment, financial status of the employer, work load available with him and several other factors. Having regard to the facts and circumstances of the present case more particularly the nature of employment extended to the disputant workman a compensation of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) would be just and appropriate award in this case.

9. Hence, the Management is directed to pay a compensation of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) to the disputant workman for his illegal retrenchment on 25.4.2011 and the amount shall be paid within two months from the date of publication of the award failing which the disputant is entitled to simple interest of 8% per annum on the amount with effect from the date of this award till its payment.

10. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2018

का.आ. 1317.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रुशिकुल्या ग्राम बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 16/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/106/2011-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 24th August, 2018

S.O. 1317.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Rushikulya Gramya Bank and their workmen, received by the Central Government on 24.08.2018.

[No. L-12012/106/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 16/2012

Date of Passing Award – 5th July, 2018

Between:

The Branch Manager,
Rushikulya Gramya Bank,
(At Present, Utkal Grameen Bank),
Bhanja Nagar Branch (Day)
Ganjam …1st Party-Management

(And)

Shri Prasanta Kumar Routa,
S/o. Maheswar Routa,
Lal Singh Sahi, Bhanja Nagar, Ganjam …2nd Party-Workman

Appearances:

M/s. Subrat Mishra, Advocate.	…	For the 1st Party-Management.
M/s. Amar Sahoo, Advocate.	…	For the 2nd Party-Workman.

AWARD

The Government of India in the Ministry of Labour by its letter No. L-12012/106/2011-IR(B-I), dated 11.01.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as "The Act") have referred for adjudication of a dispute "whether the action of the management of Utkal Grameen Bank in terminating the services of Shri Prasant Kumar Routa w.e.f. 23.04.2011, without following the provisions of Section 25-F of I.D. Act is legal and justified? To what relief the workman is entitled?"

2. The case of the 2nd party-workman as emerged from his statement of claim is that he was employed by the 1st Party-Management Bank as Sweeper-cum-Messenger with effect from 01.01.1997. Though, he was engaged on daily wage basis his wages was paid in the end of the month. At the time of his initial engagement he was paid Rs. 30/- per day which was enhanced from time to time and on the date of refusal of employment his wage was fixed at Rs. 156/- per day. According to him he worked as Sweeper-cum-Messenger for the period from 01.01.1997 to 23.4.2011 and his engagement was continuous and uninterrupted for more than 240 days in a twelve months calendar year preceding to his retrenchment on 23.4.2011. Though, he worked for more than 240 days in each calendar year after his engagement on 01.01.1997, he was not paid any notice pay and retrenchment compensation before his retrenchment. The Management

was making deposit of provident fund contribution with effect from April, 2010. Management paid bonus to the disputant in every year during the period of his engagement. Some others were also engaged like him on daily wage basis in other branches of the Management-Bank. When the Management-Bank did not take any interest in regularization of their service despite they had worked continuously for several years, they raised a dispute as a result of which the Management refused employment to him after 23.4.2011. Such refusal of employment amounted to retrenchment. It is the claim of the workman that the retrenchment being in violation of Section 25-F was illegal and unjustified. Since, the work of Sweeper and Messenger is permanent and perennial in nature in the Management-Bank, he should be reinstated with all back wages and service benefits.

3. The Management-Bank has resisted the claim of the workman taking a stand that there is a recruitment rule for appointment of staffs in the Management-Bank and the Branch Manager has no authority to give appointment to any-one except a person duly selected and recruited under the rule. Hence, there was no scope for the Branch Manager of the Management-Bank to employ or appoint the disputant as a Sweeper-cum-Messenger. The disputant was engaged intermittently on daily wage basis in exigencies and his engagement was never regular and continuous and for more than 240 days in any year or in twelve months calendar year preceding to his alleged retrenchment. Therefore, there was no requirement of complying the provisions of Section 25-F when the disputant was not given further engagement after 23.4.2011. Hence, Management has made a prayer for rejection of the statement of claim of the disputant workman.

4. On the aforesaid pleadings of the parties the following issues were framed for a just and proper adjudication of the case.

ISSUES

1. Whether the action of Utkal Grameen Bank, in terminating the services of Shri P.K. Routa w.e.f. 23.4.2011, without following the provisions of Section 25-F of the I.D. Act is legal and justified?

2. To what relief the workman is entitled?

5. In order to establish his claim the disputant workman has examined as W.W.-1 and filed copy of vouchers, copy of order of R.P.F.C. dated 14.3.2011, copy of Bank's letter dated 29.7.2009 on information on engaged casual labourers, copy of the Banks letter dated 23.12.2010, copy of Banks letter dated 15.4.2011, copy of Bank's letter dated 1.6.2011, copy of the statement of Bank showing Bonus paid to the employee, copy of the Bank's letter dated 1.1.2012 and 29.9.2012, copy of R.T.I. application of the 2nd party workman, copy of the statement showing engagement of casual labourers, copy of Bank's letter dated 18.10.2010, copy of Banks circulardated 1.7.2009, copy of Government of India circular dated 26.3.2012 showing the applicable minimum wages which are marked as Ext.-01 to Ext.-13. On the other hand the Management has examined the Manager (Administration), and relied on the official circulars like copy of the letter dated 9.3.2011 of Government of India, Ministry of Labour to the Chairman of the Bank and copy of the W.P.(C) No. 20631/2011 marked as Ext.- A and Ext.-B to refute the claim.

6. For the sake of convenience all the issue are taken for consideration jointly.

It is seen from the pleadings and evidence of the 1st Party-Management Bank that the Bank has no serious dispute to the claim of the disputant workman that he was engaged temporarily on 01.01.1997 on daily wage basis to work as Sweeper in the branch Bank of the Management at Bhanjanagar. It is not also disputed that his engagement as Sweeper was discontinued from 23.4.2011. Similarly, there is no serious controversy to the claim of the workman that his wage was fixed at Rs. 30/- per day at the time of his initial appointment which is enhanced from time to time and such daily wage was fixed at Rs. 156/- when he was allegedly refused engagement. The 1st Party-Management has not also seriously disputed the pleading and evidence of the workman that he was paid bonus in each year during the period of his employment and on his complaint the Management started making payment towards E.P.F. contribution. However, the Management has denied the engagement of the workman for more than 240 days continuously in any year or in twelve calendar months preceding to his alleged disengagement. In that view of the matter the initial burden of proof is on the disputant to show that he had completed 240 days of continuous service in a twelve calendar months preceding to his alleged disengagement as per the settled principles of the Apex Court. In this regard the workman has relied on his oral testimony as well as documents exhibited by him. It is seen from the record that documents filed by the disputant workman are copies of certain official letters belonging to the Management which are marked exhibits during hearing without any objection on the part of the Management. On a close reading of those documents it is apparent that as per letter issued in the year 2009 the Manager of the Management Bank was authorized to engage one daily wage labourer depending upon the work load of the Branch. It appears from Ext.-6, which is a figure/statistics furnished to the Chairman of the Rushikulya Gramya Bank by the Management-Bank disclosing the days for which the disputant workman was engaged and the amount paid to him towards his wages in between the period April 2008 to March, 2010. In the financial year 2008-09 the disputant was shown to have been engaged for 303 days and in the financial year 2009-10 he was engaged for 296 days. Ext.-2 which is an interim order passed by Assessing Officer, Compliance Circle-IV, Regional Provident Fund Commissioner under section 7-A in which the disputant is found to be a casual employee of the Management-Bank for which the Management-Bank was directed to make deposit of provident fund contribution for the workman. These documents are not seriously challenged by the Management-Bank. Thus, if oral assertions of the

disputant workman is taken into consideration along with the contents of exhibits filed by the disputant workman it can be safely inferred that the disputant was in continuous service of 240 days in the Management-Bank as defined under section 25-B of the Act. Hence, the burden shifts to the Management to refute the contention of the disputant workman in this regard. But, the Management has not produced any record or register before the Tribunal for its perusal to show that the disputant was never engaged for 240 days in a year. The 1st Party-Management has not taken any specific stand that the status of the 2nd party-workman was, at best, that of a daily wager by virtue of payment of wage to him at the end of each day and as such his employment deemed to be ceased automatically at the end of each day and the Bank was under no legal obligation to employ him on the next day. Rather, it is emerging from the evidence of the parties that the disputant was paid wages in the end of the month. He was paid Bonus. If the disputant is said to have received daily wages from the Management-Bank for his daily engagement, the official records or vouchers could have been produced by the Management to show that at the end of the day his engagement was completed and he was paid wages. The Management was not having any legal obligation to engage him further. The registers/record of the Bank could have disclosed the actual days for which the disputant was engaged in a calendar year. Non-production of such official records will definitely have an adverse impact on the claim of the Management. Though, M.W.-1 has denied continuous engagement of the disputant for 240 days in a year, the same is not supported by any document. Moreover, it is emerged from the cross examination of the witness that he was not posted in the Management-Bank when the disputant was engaged on daily wage basis. His statement in his evidence was based on official records. Keeping in view the totality of the evidence advanced by the parties and discussions made above it can be safely held that the disputant worked for the 1st Party-Management for the period from 01.01.1997 to 23.04.2011 i.e. for more than 14 years and he worked for 240 days in each year and his engagement was continuous and uninterrupted for 240 days in twelve months calendar year preceding to his alleged disengagement.

7. The disputant has claimed that he was not given any notice or one month wages in lieu of notice and retrenchment compensation before his disengagement. The Management has not taken any stand in this regard. Rather it is emerging from its evidence that provisions of Section 25-F was not complied with when the disputant was refused engagement. Law is well settled that retrenchment of a daily wage workman in violation of Section 25-F is not also sustainable in the eye of law. In that view of the matter the disengagement of the disputant with effect from 23.4.2011 amounted to retrenchment and such retrenchment without notice-pay and retrenchment compensation is undoubtedly illegal and unjustified.

8. The next question for consideration is what relief to which the disputant workman is entitled. It is seen from the evidence and pleadings of the parties that the disputant was not given appointment against any permanent or sanctioned post. He was engaged as a casual labourer on daily wage basis. As per exhibits filed by the disputant workman casual labour can only be engaged in exigencies depending upon the work load of the branch Bank. No specific pleadings or evidence is advanced by the disputant to show that any sanctioned or permanent post of Sweeper-cum-Messenger is available with the Management-Bank and work of such Sweeper-cum-Messenger is done by a casual/daily wage labour. On the other hand it appears from the contents of exhibits that the Branch Manager can engage a daily labour if there is more work load. Law is well settled that reinstatement with back wages is not automatic in all matters of illegal or unjustified retrenchment. Compensation in lieu of reinstatement can be awarded in suitable cases. The Tribunal or Court can award reinstatement or compensation depending upon the facts and circumstances of each case more particularly taking into consideration of the nature and period of employment, financial status of the employer, work load available with him and several other factors. Having regard to the facts and circumstances of the present case more particularly the nature of employment extended to the disputant workman a compensation of Rs. 1,50,000/- (rupees one lakh fifty thousand only) would be just and appropriate award in this case.

9. Hence, the Management is directed to pay a compensation of Rs. 1,50,000/- (rupees one lakh fifty thousand only) to the disputant workman for his illegal retrenchment on 23.4.2011 and the amount shall be paid within two months from the date of publication of the award failing which the disputant is entitled to simple interest of 8% per annum on the amount with effect from the date of this award till its payment.

10. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

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